

## The Right of Suspects to Obtain Legal Aid in Criminal Investigation

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### ABSTRACT

*In the law enforcement aspect, the unfair treatment of suspects is an act of public scrutiny that falls into the category of human rights violations. This study aims to analyze the urgency of the fulfillment of suspect rights at the stage of investigation as well as the implementation of the right to obtain legal assistance for the suspect at the investigation stage. The type of research is sociolegal research. This research conducted in Manokwari, West Papua, Indonesia, precisely in Manokwari Police Station. The result of the research indicates that the urgency to fulfill the rights of suspects is in the framework of the protection of the rights of the community which is the basic right if not fulfilled is discrimination and injustice which is expressly prohibited under the 1945 Constitution. Implementation of the right to obtain legal aid for the suspect at the investigation stage at Polres Manokwari has not been implemented optimally. The low interest of the suspects to be accompanied for not understanding the urgency of legal aid and the assumption that the use of legal aid services should be charged to be one of the obstacles in the fulfillment of the rights of suspects. In addition, the existence and interest of advocates on the provision of legal assistance is still very minimal also a constraint in implementing the right to obtain legal assistance for the suspect.*

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### ARTICLE INFO

#### **Keywords:**

Legal Aid; Right of the Suspect; Police; Investigation.

#### **How to cite:**

Dumais, I. M., Muhadar., Riza, M. (2018). The Right of Suspects to Obtain Legal Aid at Criminal Investigation. *Musamus Law Review*, 1(1), 53-62

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### 1. INTRODUCTION

The Unitary State of the Republic of Indonesia is a rule of law, this provision is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This provision requires that the law must be held firm, other than that every citizen and state apparatus must base his actions on the law.<sup>1</sup> The concept of the rule of law according to Friedrich Julius Stahl suggests that the concept of state law has four elements, namely:<sup>2</sup> Recognize and protect human rights; To protect human rights, the

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<sup>1</sup> Agus Raharjo dan Angkasa. (2011). Profesionalisme Polisi Dalam penegakan Hukum. *Jurnal Dinamika Hukum*, Vol. 11 No. 3: 389-401.

<sup>2</sup> Waluyo, B. (2015). Relevansi Doktrin Restorative Justice dalam Sistem Pemidanaan di Indonesia. *Hasanuddin Law Review*, 1(2): 210-226.

administration of the state must be based on Trias Politica; In carrying out its duties, the government is based on the law; If in carrying out its duties under the law the government still violates human rights (government interference in one's personal life), then there is an administrative court that will resolve it.

But unfortunately, Indonesia is still included in the list of countries violating human rights (HAM) as Amnesty International released. Amnesty International considers torture, excessive use of violence, and the elimination of lives by Indonesian soldiers and police. Besides Indonesia, as many as 80 other countries are included in Amnesty International's version of human rights violators, namely the United States, Myanmar and China, and Israel.<sup>3</sup> This condition is truly astonishing, especially now that Indonesia actually has a National Human Rights Commission and a Human Rights Court that has long worked.

In the aspect of law enforcement, improper treatment of suspects is an act that is in the public spotlight which falls into the category of human rights violations. Moreover, the current concept of punishment is no longer oriented to a treatment that is reprisal, but directed towards fostering Correctional Guidance based on Pancasila which is carried out in an integrated manner between coaches, fostered, and the community to improve the quality of Prisoners to realize mistakes, improve themselves, and does not repeat the crime so that it can be accepted back by the community, can actively play a role in development, and can live naturally as a good and responsible citizen.

In each stage of the examination, especially on examination at the stage of investigation, the right to obtain legal assistance must be given to the suspect, especially for those who are less fortunate and for those who do not understand the law. It is clear that the suspect since the examination stage at the investigation has been able to enjoy or obtain his rights, one of which is the right to get legal assistance or legal counsel. Where in Law No. 18 of 2003 Article 22 paragraph (1) that, Advocates are obliged to provide free legal assistance to incapable justice seekers. This provides an understanding, where the rights of suspects are guarantees of human rights (human rights), with legal assistance or legal counsel helping to provide protection for suspects in this case what is the suspect's rights cannot be revoked or contested.

As a place of custody for suspects, the state detention center has a legal aid unit, which is tasked with providing legal assistance to suspects and defendants while still in the process of proceedings.<sup>4</sup> Legal assistance programs include services and legal guidance to the assisted citizens. This is intended to achieve legal awareness so that it can solve problems related to criminal acts that befall it. Another goal is to shape the attitude of prisoners' behavior to become fully independent human beings who are responsible.

However, with the increasing number of suspects and defendants being entrusted to the State Detention House, this program of providing Legal Aid is constrained. Of course the fulfillment of rights to suspects and defendants in terms of providing legal assistance is not well implemented. This condition occurs in law enforcement in the Regency. Manokwari. Manokwari is the capital of West Papua Province, Indonesia. Manokwari is also the capital of Manokwari Regency. The city has

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<sup>3</sup> Data source: Amnesty International, quoted on the page <http://global.liputan6.com/read/160093/indonesia-termasuk-negara-pelanggar-ham>. Retrieved 6 July 2017.

<sup>4</sup> Bambang Sutyoso. (2010). Mencari Format Ideal Keadilan Putusan Dalam Peradilan. *Jurnal Hukum Ius Quia Iustum*, Vol. 17 No. 2: 217-232.

an area of 1,556.94 km<sup>2</sup> and has a population of approximately 201,218 people. In the past 5 years, there has been an increase in the number of criminal acts handled by the Manokwari Regional Police.

From a series of law enforcement efforts carried out, several local media said that the fulfillment of human rights of suspects is still far from a proper condition in accordance with applicable laws and regulations. Urgency The fulfillment of the rights of suspects at the stage of investigation of crimes in the Manokwari Regional Police is still very weak. Besides that the implementation of the Fulfillment of the Right to obtain legal assistance for the Suspects at the stage of investigation at the Manokwari Regional Police Station is still experiencing obstacles in its implementation. Based on the background of this problem, the author feels interested in raising this issue in a thesis title, namely: The Rights of the Suspect to Get Legal Aid at the Criminal Investigation at Manokwari Regional Police.

## **2. METHOD**

This type of research is legal research in sociolegal research, namely legal research conducted with an approach to legal reality in society.<sup>5</sup> This research will be conducted in Manokwari Regency, namely at the Manokwari Police Station. The location selection is based on several cases which have been found to have forced attempts against suspects which are acts of human rights violations of suspects. Data obtained both primary and secondary were analyzed qualitatively, then presented descriptively, namely explaining, describing and answering the formulation of the problem related to the fulfillment of the rights for suspects in Manokwari Regency.

## **3. ANALYSIS AND DISCUSSION**

### **3.1. The Urgency of Fulfilling the Rights of Suspects in the Stages of Criminal Investigation at the Monokwari Regional Police Station**

The provision of legal assistance, especially for suspects or defendants, is a basic right of the community, which if not fulfilled constitutes discrimination against basic rights, because it is a form of discrimination explicitly prohibited based on the constitutional rights. The principle of equality before the law has been contained in Article 28D paragraph (1) of the 1945 Constitution, namely that everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law. This is a consequence of the State of Indonesia being a state of law (Article 1 paragraph (3) of the 1945 Constitution as a result of the third amendment). There are three principles of the rule of law (*rechstaat*), namely the rule of law (supremacy of law), equality before the law, and law enforcement in ways that do not conflict with the law (due process of law).

The substance of legal aid in Indonesia is the most basic question, namely whether legal assistance is mandatory or is only required after certain conditions have been fulfilled. Legal assistance is an important instrument in the Criminal Justice System because it is part of the protection of human rights, especially the right to freedom and the rights of the body of the suspect / defendant. The main human rights

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<sup>5</sup> Zainuddin Ali. (2011). *Metode Penelitian Hukum*. Ed. 1 Cet. 3. Jakarta: Sinar Grafika. pp. 24-25.

prohibited by the Criminal Procedure Code are those of the suspect or defendant, among others:<sup>6</sup>

1. Equal rights and position and obligations before the law;
2. Must be considered innocent or presumption of innocence;
3. Arrest or detention is based on sufficient initial evidence;
4. The right to prepare a defense early.

These citizens' rights will have no meaning, if the state can arbitrarily (through its apparatus); killing (extrajudicial execution), arresting, detaining, torturing, searching and confiscating goods of a citizen arbitrarily. These practices deviate from the provisions of a legal state.<sup>7</sup>

Fulfillment of the right to legal assistance means that the state must use all its resources, including in the executive, legislative and administrative fields to realize progressive legal aid rights. The state should make action by making legal assistance policies in the perspective of access to justice.<sup>8</sup> In the Criminal Procedure Code, people who provide legal assistance are not referred to as advocates, but are called legal counsel. The definition of a legal counsel according to Article 1 number 13 of the Criminal Procedure Code, is a person who fulfills the requirements determined by or based on the law to provide legal assistance.<sup>9</sup>

The procedure for granting legal rocks is specified in the KUHAP as follows:<sup>10</sup>

- a. Legal counsel has the right to contact suspects from the moment they are arrested or detained at all levels of examination (Article 69 of the Criminal Procedure Code)
- b. Legal counsel has the right to contact and speak with suspects at each level of examination and at any time for the benefit of the defense of the case (Article 70 paragraph (1) KUHAP)
- c. At the request of the suspect or his legal counsel, the official concerned gives a derivative of the investigation report for the benefit of his defense (Article 72 of the Criminal Procedure Code).

Legal counsel in providing legal assistance is contained in Law Number 8 of 1981 concerning the Criminal Procedure Code, specifically Article 54 which reads: "For the benefit of a defense, the suspect or defendant has the right to receive legal assistance from one or more legal advisors during the time and at every level of examination, according to the procedures specified in this law. "

The provision of Article 54 gives the suspect the right to get legal assistance from a lawyer or more at the stage of the investigation to begin. Legal assistance at this stage is still a right not to the mandatory level. Because legal assistance by new legal counsel is a right. Obtaining legal assistance still depends on the willingness of the suspect to be accompanied by legal counsel. Suspects can use these rights but can also not use them. Consequently, without being accompanied by legal counsel, it does not prevent the investigation of suspects.

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<sup>6</sup> M. Yahya Harahap. (2009). *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan*, Jakarta: Sinar Grafika, pp. 1-2.

<sup>7</sup> Mien Rukmini. (2007). *Perlindungan HAM Melalui Asas Praduga Tidak Bersalah dan Asas Persamaan Kedudukan Dalam Hukum Pada Sistem Peradilan Pidana Indonesia*, Bandung: Alumni, pp. 111.

<sup>8</sup> M. Yahya Harahap. (1985). *Pembahasan Permasalahan Penerapan KUHAP. Jilid I dan II*. Jakarta: Sarana Bakti Semesta, pp. 43.

<sup>9</sup> R. Soesilo. (1991). *Kitab Undang-Undang Hukum Pidana serta Komentarnya Pasal demi Pasal*, Bogor: Politea.

<sup>10</sup> Sudarto. (1997). *Hukum Pidana dan Perkembangan Masyarakat*, Bandung: Sinar Baru. pp. 177.

The examination phase is regulated in detail in the Criminal Procedure Code which in principle gives certain authority to the institution (administrative-biocratic) to implement the system, the mechanism of the rules, and guarantee the rights of suspects in the examination process.<sup>11</sup> Under these conditions criminal justice has enormous powers, ranging from the Police, Attorney General's Office, Courts and Correctional Institutions. The problem is how far the task of examining cases is carried out as the hopes of many parties are aimed at the judiciary, able or not to provide protection for the community, because the tendency so far arises is that criminal justice is more formal administrative / bureaucratic. This arises as a consequence of the superior superiority of the judiciary and issues related to the administrative functions of justice to combat crime<sup>12</sup>.

Legal advisors are useful as deterrents of criminal justice such as the Police, Attorney General's Office, Courts and Correctional Institutions so that there is no misuse of authority. This is important for suspects who do not know the law so that legal counsel can help the suspect. And can accelerate administration in criminal justice institutions that make work efficiency easy and not complicate the suspect.

Starting from the KUHAP that more attention to human rights, the existence of Advocates / Legal Counselors in assisting suspects / defendants is felt important. In practice, before accompanying a defendant at the hearing the Legal Counsel must obtain a "Special Power of Attorney" from the defendant who is then registered in the Registrar's Office of the case or can be appointed verbally by the defendant in the trial and if the defendant is unable to be accompanied by The Legal Adviser appointed by the court is based on "Determination" of the appointment by the Panel of Judges to hear the case. To get legal assistance for free, the defendant must prove himself incapable based on a statement from the local government.

Bripka Mario Manuri, S.H. as the investigator of the Manokwari Regional Police stated that:

*The suspect as a layman in the field of law certainly does not know about the ins and outs and the intricacies of the law that must be passed to get justice and to defend the rights and interests when he is involved in a case. In pursuing a tortuous legal process we can imagine how panicked a suspect might be in facing an investigator who accused him of committing a crime of corruption even more so if this is not necessarily true. Even if he is right and guilty of committing a criminal act, he is also a human being who has the same rights as other human beings including those who conduct investigations on his board so that he must get fair and proper treatment so that he is not subjected to improper treatment and contrary to law invite and humanity. Therefore the need for the suspect was accompanied and given assistance by legal counsel at the level of investigation.*

Given the interests of suspects in the investigation process and the interests of legal counsel in preparing the defense of the trial later, according to the provisions of Article 54 of the Criminal Procedure Code the right of the suspect or defendant to obtain legal assistance in the investigation process or when facing a trial in court, Article 55 of the Criminal Procedure Code the suspect has the right to receive legal assistance from a legal counsel in all inspection processes. According to the procedure carried out in the law and Article 56 of the Criminal Procedure Code the suspect has

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<sup>11</sup> Anton. F. Susanto. (2004). *Wajah Peradilan Kita, Konstruksi Sosial Tentang, Mekanisme Kontrol dan Akuntabilitas Peradilan Pidana*. Bandung: PT Refika Aditama. Pp. 82.

<sup>12</sup> [http://www.blogger.com/blogID=2508075487091356515\\_-\\_ftn16](http://www.blogger.com/blogID=2508075487091356515_-_ftn16).



the right to choose his legal counsel as explained in Article 56 paragraph 1 of the Criminal Procedure Code that the suspect's rights are accompanied by legal counsel if the alleged crime is punishable by death or 15 years or more .

Starting from the aforementioned descriptions, in relation to the main issue, namely the extent to which the role of legal assistance for suspects in the criminal proceedings, it can be clearly seen that the role of a legal adviser is needed to protect the rights of suspects from the time of arrest and detention by the investigator, before and during the course of the investigation for further investigation on the trial later.

### **3.2. Implementation of the Fulfillment of the Right to Obtain Legal Aid for Suspects at the Investigation Stage at the Monokwari Regional Police Station**

Legal assistance is a very essential thing in creating a just life and protecting human rights. Where legal assistance is provided aims to protect the rights of the community in terms of legal issues in order to avoid all kinds of actions that could endanger or arbitrarily act law enforcement officers.

The importance of legal protection against suspects, as a party suspected of committing a crime, is related to the problem of a lack of legal understanding by the suspect so that someone who is actually innocent can become entangled in law due to his lack of understanding regarding the law.<sup>13</sup> In this study, as stated earlier the author conducted research on the implementation of the fulfillment of the right to obtain legal assistance for suspects. The study was conducted at the Manokwari City Resort Police, which was conducted on November 4, 2017. Based on data obtained by the author, it was found that the number of detainees still detained until November 2017, amounted to 47 (forty seven) prisoners. The unit that handles issues related to detainees at the Manokwari Resort Police Station is called UNIT TAHTI or stands for Unit Prisoners and Evidence.

To get the accuracy of the data the author also conducted interviews with other officials. On the same occasion, the author also conducted an interview with Bripka Mario Manuri, SH, as an investigator at the Manokwari Resort Police. Regarding the fulfillment of the right to legal assistance, it was stated:

“The mentoring process carried out during the inspection process is a series of formalities that are carried out in order to fulfill the rights of suspects as mandated by applicable regulations. This is because many lawyers who provide assistance are not optimal. This is due to assistance provided for free”.

Responding to the above opinion, the author stated that what was meant by the apparatus above was inappropriate. This is because the fulfillment of the rights of suspects is not only related to the issue of carrying out the provisions of the law, but also the implementation of law enforcement can be carried out correctly so as not to cause errors in the application of the law or even violence against suspects which causes harm to the suspect. If the provision of legal assistance is only considered a mere formality, the problem then is that there is no guarantee of the quality of legal assistance provided. Even though the handling of a legal case requires the involvement of an advocate from the start to prepare a case handling and defense properly. This writer considers the fulfillment of ineffective rights. If it is said that the assistance provided is free, it is also not appropriate, because advocates who provide services

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<sup>13</sup> Adami Chazawi. (2005). *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*. Malang: Bayumedia Publishing. pp. 27

continue to receive payments from the state. Furthermore, on November 4, 2017, the author conducted a study using a questionnaire on several detainees at the Manokwari Regional Police Station (Table 1).

**Table 1.** Fulfillment of the Right to Obtain Legal Aid for Prisoners at Manokwari Regional Police Station

No	Suspect response	Volume	Article that is alleged
1.	No need for legal assistance	3	Mild persecution Article 352, Article 112 of the Narcotics Act, Article 365 concerning theft by violence, embezzlement of Article 372 of the Criminal Code
2.	His lawyer is difficult to contact	8	Article 364 concerning minor theft and Article 365 concerning theft by violence, severe torture in Article 354, Article 112 Narcotics Law, child abuse Article 76C Law 35/2014, Article 44 paragraph [4] Domestic Violence Law
3.	Not Knowing Legal Aid Procedures	11	Article 362 concerning ordinary theft, Article 340 KUHP, Article 112 Narcotics Law, Article 364 concerning minor theft, Land grabbing Article 2 Law Number 51 PRP 1960, Obscene Acts Article 76E Law 35/2014 and Misuse of Senpi Article 1 Paragraph D Law No. 8 of 1948), Article 44 paragraph [4] of the Domestic Violence Law
4.	Already well accompanied	3	Article 363 concerning Article theft with weighting, severe abuse in Article 354, Article 112 of the Narcotics Law, Article 2 and Article 3 of Law No. 31 of 1999
Total		25	

*Source: Primary data, results of processing (2017).*

Based on the data above, it can be concluded that there are many factors that influence the fulfillment of the right to get legal assistance for prisoners at the Manokwari Regional Police Station. 3 people who sampled stated that the person concerned did not need legal assistance, 8 people were accompanied, but his lawyer was difficult to contact, 11 people stated that the person concerned did not know the procedure for obtaining legal assistance and 3 people stated that they had been accompanied properly.

Furthermore, the research was conducted in the form of interviews with IPTU. Juman Simanjuntak, as Investigator at the Manokwari Regional Police regarding the fulfillment of the right to legal assistance, he stated that:

*The suspects who were in detention were entrusted prisoners from the Sector Police throughout the Manokwari region. Prisoners who are in the police station in fulfilling their rights to get legal assistance are still fulfilled. We provide services as well as legal counseling sites for suspects who are in detention. Legal assistance from the majority of detainees is legal counsel ordered / presented by the detainee's own family.*

Responding to the comments above, then the author questions about the fulfillment of the rights of suspects whose economic capacity is lacking, he stated that:

*To fulfill the rights of suspects who have weak economic capabilities, usually a prodeo lawyer is carried out by the police. Some of the detainees who were entrusted, have been given legal assistance since the examination at the POLSEK. In addition, we also held legal counseling related to the fulfillment of the rights of suspects, defendants and convicts, as a provision for them so that when they proceeded to the next examination they had an understanding of the legal process related to cases that ensnared them.*

The things stated above, it would be very good related to the fulfillment of the rights of suspects. Of course it is expected that with the implementation of counseling routinely, detainees will get provisions and can monitor the examination process independently, and know what actions can be taken if their rights are ignored during the inspection process until the court decision is legally binding.

From a series of studies conducted by the author above, both interviews and collecting secondary data, it can be concluded that the implementation of the right to obtain legal assistance at the Manokwari Regional Police Station has been implemented well, but some still need to be addressed.

On November 2, 2017, the author conducted an interview with one of the detainees at the Manokwari Regional Police regarding the fulfillment of this legal aid. Responding to the lack of understanding of the detainees regarding their rights as in the data in table 1 before, the detainee never knew that anyone was provided with a free legal aid. Most detainees assume that if accompanied by a lawyer, they must pay a fee. In addition, the author also found the assumption of several suspects who stated that they did not need legal assistance, because basically the results would be the same, they would still be convicted.

According to the author, what was done by the Manokwari police station was very appropriate. This is very positive, considering that suspects also need legal insight so that they are treated humanely while undergoing the inspection process. Furthermore, related to the complaint of the suspect regarding his 'Difficult Contacting' lawyer, based on the results of a search conducted by the Author, it was found that this incident usually happened to those accused of committing a crime, and hoped the existence of a lawyer could release them from legal entanglement, or reduce sanctions that would dropped to him. Usually these suspects come from middle-class economic families, so they are able to hold independent legal assistance.

Next, Ipda. Urib agus mulyono, S.H. said that many suspects ignored legal aid provided by their legal advisors. Many suspects are afraid of the costs that will be incurred for their lawyers, in addition to the imbalance between the number of advocates in Manokwari and the people who seek justice is still very high. Based on the results of the above research.



It can be concluded that in general, the obstacles in the effort to fulfill the rights of suspects in obtaining legal assistance are as follows:

1. Refusal by the suspect, for fear of being charged a fee.
2. The lack of the number of Advocates in Manokwari, causing the provision of legal assistance to be less optimal;
3. Lack of government attention to legal counseling activities at Manokwari Regional Police Station.

Responding to the above problems, the author concluded that the fulfillment of the right to obtain legal assistance for suspects was sought by the authorities. However, most suspects offered legal assistance did not want to be accompanied, so the assistance process was not carried out, but formally continued assistance was made, this was intended so that the fulfillment of the actual rights had been carried out, but the suspect refused to use his rights.<sup>14</sup> Regarding the reason for rejection, the fear of being charged, the author suggested that the Manokwari Regional Police, when conducting counseling, confirm to the suspects that their rights were guaranteed by the Act, and were not subject to fees for the use of rights.

#### **4. CONCLUSION**

Urgency to fulfill the rights of suspects is in the framework of protecting the rights of the community which is a basic right which if not fulfilled is a discrimination and injustice which is expressly prohibited under the 1945 Constitution. Legal assistance is part of a correct understanding of due process of law ( fair legal process) where one of the elements is a suspect and the defendant must be guaranteed to be able to defend himself to the fullest. In addition, the urgency of legal assistance is to expedite the judicial process, especially in the investigation phase so that there is no error in trying to find material truth in a criminal case.

Implementation The fulfillment of the right to obtain legal assistance for suspects at the stage of investigation at the Manokwari Regional Police Station has not been optimally implemented. The low interest of suspects who want to be accompanied because they do not understand the urgency of legal assistance and the assumption that the use of legal aid services must be charged is one of the obstacles in fulfilling the rights of suspects. In addition, the existence and interest of advocates towards the provision of legal assistance which is still very minimal is also an obstacle in implementing the right to obtain legal assistance for suspects.

As a research recommendation, given the importance of fulfilling the rights of suspects at each stage of criminal investigations, especially at the stage of investigation, the Manokwari Regional Police must cooperate with Legal Aid Institutions in the Manokwari jurisdiction so that the right to legal assistance can be implemented properly. In addition, the socialization of suspects at the Manokwari Regional Police Station must be carried out persuasively by providing the best possible explanation to the suspect. This is intended so that the suspect's assumption regarding the cost of legal assistance and the difficulty of the inspection process when obtaining legal assistance is resolved.

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<sup>14</sup> Andi Zainal Abidin Farid. (2005). *Pemidanaan, Pidana dan Tindakan Dalam Rancangan KUHP*. Jakarta: Elsam, pp. 53.

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