



## LAW & SOCIAL POLICY | RESEARCH ARTICLE

# Right to Case Files in Criminal Cases in Indonesia

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**Abstract:** Indonesia, as a democratic country that prioritises human rights, pays special attention to the protection of the rights of its citizens involved in the criminal justice process. In this regard, case files are an important element in the preparation of evidence in criminal cases. However, there is a misalignment in the criminal law regarding how to access case files. Article 72 of KUHAP allows suspects to request a copy of the investigation report, while Article 143(4) of KUHAP requires the prosecutor to include the case file when submitting the case to the court. In order to ensure fairness in the criminal justice system and maintain cost-efficiency in the handling of cases, it is important to explore and clarify the right of access to case files. This paper aims to identify the ideal form of such a right in order to accommodate the needs of suspects, defendants or prisoners in properly preparing their defence in the Indonesian criminal justice process. In the Indonesian criminal justice system, case files are important documents used by suspects, defendants or prisoners to prepare a defence in a criminal case. Unfortunately, the right of access to case files, as stipulated in the Criminal Procedure Code (KUHAP), still creates confusion. Article 72 of the Criminal Procedure Code entitles the suspect to request a copy of the investigation report, while Article 143(4) of the Criminal Procedure Code requires the prosecutor to include the case file when submitting the case to the court. This paper concludes that Article 72 of the Criminal Procedure Code needs to be revised to clarify the right of access to case files. The revision proposes changing the text to read "Upon request of the suspect, accused or convict, or his/her proxy, the relevant official shall provide a copy of the derivative examination report for the purpose of their defence." Similarly, the explanation of Article 143 of KUHAP is revised to clarify that the power of attorney for the appointment of a case is the letter of appointment of the case itself complete with the indictment and case file, except for the case file provided at the request of the suspect, his attorney, or his legal counsel to the prosecutor. These changes provide a more definitive formulation while taking into account the economic approach in the criminal justice process. The right of access to case files remains protected, while the state is not burdened with the obligation to provide case files to all suspects at the prosecution stage.

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## 1. INTRODUCTION

The State of Indonesia is a democratic legal state and upholds human rights. Indonesia guarantees the rights of its citizens who are declared suspects or defendants in criminal justice (Dinanti & Wahyuningsih, 2016). This can be seen implicitly in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which stipulates "Every person has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law" as one of the articles in the rubric of human rights which is one of the implementations of the rule of law concept. KUHAP as a master piece or masterpiece of the Indonesian nation has also adopted guarantees of rights for Indonesian citizens who are declared as suspects or defendants in carrying out criminal justice quickly (Martana et al., 2019), simply and at low cost based on due process of law which emphasizes that law enforcement actions must be based on regulations. legislation as the right of due process (Rahim et al., 2020). However, the due process of law ideally still considers the economic approach (benefit and cost) so that the implementation of the criminal justice system can reduce the efficiency of costs incurred by the state because in addition to the real losses suffered as a result of criminal acts there are also costs incurred for handling cases involving must also be considered (Akbar, 2022).

In criminal cases, case files are documents needed by suspects or defendants or convicts to prepare evidence in criminal cases. Unfortunately, from the perspective of norms, there is an antinomy between the provisions of Article 72 of the Criminal Procedure Code and Article 143 paragraph (4) of the Criminal Procedure Code. Article 72 of the Criminal Procedure Code reads "At the request of the suspect or his legal adviser, the official concerned provides a copy of the minutes of the examination for the benefit of his defense". In the Elucidation of Article 72 of the Criminal Procedure Code it states "what is meant by "for the benefit of their defense" is that they are obliged



to keep the contents of the minutes for themselves. What is meant by "derivatives" is that they can be in the form of photocopies (Faisal, 2019; Flora & Suharudin, 2023). What is meant by "examination" in this article is examination at the investigative level, only for examination of suspects. At the prosecution level are all case files including indictments. Examination at the court level is the entire case file including the judge's decision. Meanwhile, Article 143 paragraph (4) of the Criminal Procedure Code states "The derivative of the case delegation letter along with the indictment is submitted to the suspect or his attorney or his legal adviser and investigator, at the same time as the submission of the case delegation letter to the district court". In the Elucidation of Article 143 of the Criminal Procedure Code it states "what is meant by "letter of case delegation" is the letter of delegation of cases itself complete with the indictment and case files". Regarding the two articles, it can be seen that 2 (two) things, namely First, Article 72 of the Criminal Procedure Code places the case file as a right for the suspect which is given on the basis of a request to the investigator/public prosecutor, but Article 143 paragraph (4) of the Criminal Procedure Code places the case file as rights for suspects that must be given by the public prosecutor, and Second, the right to case files is only for suspects or defendants even though a convict also needs case files to prepare a defense in submitting legal proceedings for review (Renan, 2017; Seo, 2013)

This antinomy of norms also has implications in practice where sometimes case files are given at the request of the suspect or his legal adviser even though based on Article 143 paragraph (4) of the Criminal Procedure Code, the public prosecutor is required to provide the case handover letter itself complete with the indictment and case files at the time of handing over the case files to court. Not infrequently, public prosecutors are reported by legal advisers on charges of violating the provisions of Article 143 paragraph (4) of the Criminal Procedure Code or Article 143 paragraph (4).

Given the importance of case files for suspects or defendants or convicts in criminal cases, and the criminal justice process must pay attention to the effectiveness and efficiency of the cost of handling cases, this paper seeks to ascertain what form of right to case files is ideal in criminal cases.

## 2. Research Method and Materials

This paper is normative legal research using statutory and case approaches to legal materials collected through literature studies and then analyzed using grammatical, authentic, systematic, and doctrinal interpretation methods. This research applies a normative approach in analysing legal issues related to the right of access to case files in the Indonesian criminal justice system. The normative approach focuses on research into the applicable law, using the statutory method and the case law method as the main analytical basis. Legislation is used to investigate the legal regulations contained in the Criminal Procedure Code (KUHAP), especially Article 72 and Article 143 paragraph (4). This approach allows researchers to understand the substance of these regulations. The legal texts, both in the articles and explanations, were carefully analysed to identify possible inconsistencies and ambiguities in the existing legal norms. The case approach was used to examine court decisions relevant to the right of access to case files. In this regard, the researcher examined case law involving debates surrounding this right. Case analysis helps to understand how the right of access to case files is applied in court practice, as well as how legal interpretation has evolved in different case contexts. This helps to provide a clearer picture of the development of the law on this issue. This research is based on an in-depth literature review. Through the collection of relevant legal materials, such as the text of the KUHAP, explanations, as well as court decisions, the researcher was able to form a solid basis for analysis. The literature review also involved reference to secondary legal sources, such as books, articles, and legal guides, which can provide additional insights into the issue under study. In the process of analysis, the researcher applied various methods of interpretation, including: Grammatical Interpretation: To correctly understand the legal text based on its grammar and sentence structure. Authentic Interpretation: To determine the authenticity of the legal text and understand its origin. Systematic Interpretation: To contextualise legal provisions within a broader legal framework. Doctrinal Interpretation: To understand the law in the context of existing legal doctrine. By combining the statutory method, case method, literature review, and various methods of interpretation, this research aims to provide a comprehensive understanding of the right of access to case files in the context of Indonesian criminal law. It is hoped that the results of this research will make an important contribution towards a better understanding of the law, as well as possibly providing a solution to the lack of clarity in the regulations governing this issue, while taking into account the protection of suspects' rights, cost efficiency, and fairness in the criminal justice system.

### 3. Results and Discussion

The case file is a collection of letters resulting from an investigation which form the basis for the public prosecutor to draw up an indictment. In the case file there are various kinds of investigation results, namely minutes of examination of witnesses, minutes of examination of experts, as well as minutes of examination of suspects, minutes of confiscation of evidence, laboratory results, other investigative results. The case file, which is then adapted by the public prosecutor, becomes an indictment which is the basis for examination in court. Meanwhile, a case delegation letter is a letter declaring the public prosecutor to transfer the case dossier, whether it is a dissertation or not accompanied by evidence to the court with a request to be examined and tried. Thus, referring to the provisions of Article 143 paragraph (4) and the Elucidation of Article 143 of the Criminal Procedure Code, the case delegation letters, indictments and case files are each different letters and are the rights of the suspect or his attorney or legal adviser and investigator, which must be given by the public prosecutor when submitting the case to court. Whether the suspect or his attorney or his legal adviser and the investigator uses or not uses the letter of delegation of cases, the indictment and the case file is the right of the suspect or his attorney or his legal adviser. (Isra et al., 2017) This is then referred to as a positive right which creates an obligation as something that must be carried out or a necessity for the state in casu the public prosecutor to fulfill the rights of the suspect or his attorney or his legal adviser and investigator. (Santriana Santriana et al., 2023)

With regard to positive rights for suspects to obtain case delegation letters, indictments, and case files, the Criminal Procedure Code has provided a special rubric for the fulfillment of suspects' rights as part of the due process of model, namely in Chapter VI Suspects and Defendants in Articles 50 of the Criminal Procedure Code up to Article 68 of the Criminal Procedure Code and Chapter VII of Legal Aid in Article 69 of the Criminal Procedure Code to Article 74 of the Criminal Procedure Code. None of the provisions in that chapter make the letter of delegation of cases, indictments, and case files a positive right of the suspect, namely the right of the suspect which obliges officials at each examination, be it investigators, public prosecutors, and judges, to provide case files to the suspect.

The right of a suspect to obtain case files is regulated in Article 72 of the Criminal Procedure Code and the Elucidation of Article 72 of the Criminal Procedure Code which basically states that the right of a suspect or legal adviser is to request copies of the minutes of examination of the suspect at the investigative level, case files and indictments at the prosecution level, as well as case files including judge's decision at the level of examination in court. Whether the suspect or his attorney or his legal adviser uses or does not use the right to request copies of the minutes of examination of the suspect at the investigative level, case files and indictments at the prosecution level, as well as case files including the judge's decision at the examination level in court are the rights of the suspect or his attorney or his legal adviser. And there is absolutely no obligation for investigators, public prosecutors, judges to provide derivatives of the minutes of examination of suspects at the investigative level, case files and indictments at the prosecution level, as well as case files including the judge's decision at the examination level in court to the suspect or his attorney or adviser. the law. This is then referred to as a negative right that is different from positive rights, namely the right to do or not do something that is a right. Negative rights emphasize the authority of each legal subject to act according to his will without the interference of other parties.

The Criminal Procedure Code itself has regulated several provisions regarding positive rights and negative rights relating to suspects, including:

- a. Positive rights that give rise to Obligations: Article 50–Article 54, Article 56, Article 57–Article 68, Article 69, Article 70 paragraph (1), Article 73, Article 74, Article 82 paragraph (1) letter b, Article 82 paragraph (3) letter a, Article 116 paragraph (3), and parts thereof.
- b. Negative rights: Article 72, Article 79, Article 81, Article 95, Article 97, and so on.

If the provisions of Article 72 and the Elucidation of Article 72 of the Criminal Procedure Code are connected with the provisions of Article 143 paragraph (4) and the Elucidation of Article 143 of the Criminal Procedure Code, then there is an antinomy between Article 143 paragraph (4) and the Elucidation of Article 143 of the Criminal Procedure Code which explains that there is an obligation for the public prosecutor (positive right for suspect) to provide a copy of the letter of delegation of cases along with the indictment including the case files to the suspect or his attorney or his legal advisors and investigators, at the same time as the submission of the letter of delegation of cases to the District Court, with Article 72 and Elucidation of Article 72 of the Criminal Procedure Code which states that there is a right (negative rights) suspects or legal advisers to request copies of the minutes of examination including case files for the benefit of their defense.

Seeing the number of general criminal cases handled by the Attorney General's Office is not small as reported in the 2020 Report on the Results of the National Prosecutors' Office of the Republic of Indonesia, namely:

- 1) the number of general criminal cases at the prosecution level handled by the High Prosecutors Office of Indonesia in the period from January to September 2019 was 102,883 cases, and
- 2) 2) the number of general criminal cases at the prosecution level handled by the Deputy Attorney General for General Crimes at the Attorney General's Office of the Republic of Indonesia in the period from January to October 2019 was 842 cases,

then in addition to the occurrence of legal antinomy as explained above, with the enforcement of the provisions of Article 72, Elucidation of Article 72 of the Criminal Procedure Code, Article 143 paragraph (4) and Explanation of Article 143 of the Criminal Procedure Code, there are thousands of case files both criminal acts whose evidence is easy or serious, both with a quick, brief or ordinary examination procedure, which must be given by the Indonesian Public Prosecutor to the suspect or his attorney or his legal adviser and investigator. This is certain to place an excessive burden on state finances which must finance thousands of case files to be given to suspects or their proxies or their legal advisers and investigators when the Public Prosecutor submits cases to the Court. Why is the trial very expensive?

The case file given to the suspect must have come from state finances taken from public taxes. The provisions of Article 143 paragraph (4) along with the Elucidation of Article 143 of the Criminal Procedure Code which obliges the public prosecutor to provide case files to suspects or their proxies or legal advisers and investigators, at the same time as submitting the case handover letter to the District Court has the potential to result in case files sourced from state finances or community taxes also has the potential to be wasted or wasted if the suspect does not want to use it, so that it can be ascertained that it will harm state finances.

Economic analysis is very influential in criminal justice policy because it can reduce the efficiency of costs incurred by the state in handling cases because in addition to the real losses suffered as a result of criminal acts there are also costs incurred for handling cases. The criminal justice system which adheres to the principle of the speedy administration of justice (Handika et al., 2020) as part of the due process of model, on the one hand is obliged to provide fair treatment (equality before the law) to a suspect, but on the one hand it is also expected not burdening state finances which can be minimized with policies based on benefits and costs in the sense of the word being effective with minimal spending.

In fact, the indictment which is the conclusion of the results of the investigation can be used as a basis for the suspect or the suspect's legal adviser to prepare a defense either in the form of an objection (exception) against the indictment, during examination at trial, preparation of defense (pledoi) against the charge sheet Public Prosecutor, as well as duplicates.

An indictment is a letter or deed that contains a formulation of the crime charged against the defendant which is concluded and withdrawn from the results of an investigative examination and forms the basis and foundation for a trial examination. Based on the Circular Letter of the Attorney General of the Republic of Indonesia Number SE-004/J.A/11/1993 concerning Drafting of Indictments states that the function of Indictments occupies a central and strategic position in the examination of criminal cases in Court, therefore the Indictment is very dominant for the successful implementation of prosecution duties. Judging from the various interests related to the examination of criminal cases, the function of an Indictment can be categorized:

- a) For the Court/Judge, the Indictment is the basis and at the same time limits the scope of the examination, the basis for consideration in imposing a decision;
- b) For the Public Prosecutor, the Indictment is the basis for proof/juridical analysis, criminal charges and the use of legal remedies;
- c) For the accused/legal counsel, the indictment is the basis for preparing a defence.

Thus, the indictment as a conclusion from the results of the investigation is sufficient and can be used as a basis for the accused/legal adviser to prepare a defense.

The provisions of Article 72, Elucidation of Article 72, Article 143 paragraph (4) and Elucidation of Article 143 of the Criminal Procedure Code do not realize the speedy administration of justice as part of the due process of model and do not provide legal certainty, so that the derivative case files should only be given to the suspect or the accused or his attorney or his legal adviser on the basis of a request (negative right) to the official concerned at each level of justice.

In addition, the application of the provisions of Article 72, Elucidation of Article 72, Article 143 paragraph (4) and Elucidation of Article 143 of the Criminal Procedure Code are no longer in accordance with developments in the handling of criminal cases. Article 72 of the Criminal Procedure Code and Elucidation of Article 72 of the Criminal Procedure Code has its own antinomy, namely Article 72 of the Criminal Procedure Code states that there is a negative right for the suspect to obtain minutes of examination, while in the elucidation of Article 72 of the Criminal Procedure Code it states that what is meant by "examination" in Article 72 of the Criminal Procedure Code is an examination at the investigative level, only for examination of suspects, at the prosecution level are all case files including indictments, examinations at the court level are all case files including the judge's decision.

As we all know, the legal subject of examination at the investigative level is a suspect. The legal subject at the prosecution level is a suspect who in practice a suspect change his status to become a defendant when the Judge at the District Court issues a date determination letter. Based on this, it can be concluded that the legal subject in court examination is the defendant, while the legal subject in the prosecution stage is the suspect (before the judge sets the trial day) and the defendant (when the trial begins until the decision obtains permanent legal force) because the prosecution stage does not It is only interpreted as limited to the process of delegation of cases but extends to proof by the public prosecutor in court, legal proceedings, until the decision obtains permanent legal force. The legal subject of examination at the court level is not only the defendant but also the convict who needs the case files including the judge's decision to take extraordinary legal action, namely judicial review. Thus clearly, there is a separate antinomy in Article 72 of the Criminal Procedure Code and the Explanation of Article 72 of the Criminal Procedure Code also creates legal uncertainty.

The Criminal Procedure Code has provided a sharp distinction between the definition of a suspect, defendant and convict, namely Article 1 number 14 of the Criminal Procedure Code states "a suspect is a person who because of his actions or circumstances, based on preliminary evidence, should be suspected of being the perpetrator of a crime", Article 1 point 15 of the Criminal Procedure Code states "the accused is a suspect who is prosecuted, examined, and tried in court, and Article 1 number 32 of the Criminal Procedure Code states "a convict is a person who is convicted based on a court decision that has obtained permanent legal force". A different formulation can be seen in the Draft Law on the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code Bill). Article 1 point 11 of the Criminal Procedure Code states "A suspect is a person who because of sufficient initial evidence is strongly suspected of having committed a crime", Article 1 number 12 of the Criminal Procedure Code states "The accused is someone who is prosecuted, examined and tried in court", Article 1 point 13 of the Draft Criminal Procedure Code states "A convict is someone who has been sentenced to a crime based on a court decision that has obtained permanent legal force". There is a clear difference in the Draft Criminal Procedure Code, which in defining the concept of the Defendant does not state that the Defendant is a suspect who is being prosecuted, but directly states that the Defendant is someone who is being prosecuted.

In addition, the Criminal Procedure Code also regulates a different formulation from Article 72 of the Criminal Procedure Code. Article 106 of the Criminal Procedure Code states "At the request of a suspect, defendant or their legal adviser, investigators, public prosecutors or officials at the State Detention Center as referred to in Article 105 provide derivatives or copies of the Minutes of Examination for the benefit of their defense" and the explanation of Article 106 of the Criminal Procedure Code explains "What is meant by "derivatives" is that they can be in the form of photocopies. (Ansori & Subroto, 2022; Saputra, 2013) It can be seen that Article 106 of the Criminal Procedure Code accommodates the defendant's right to obtain case files in addition to the suspect's right, although it does not accommodate the convict's right to obtain case files and judge's decision for the benefit of carrying out extraordinary legal remedies. This further confirms that Article 72 of the Criminal Procedure Code and the Explanation of Article 72 of the Criminal Procedure Code creates legal uncertainty.

In addition, there is a *contradictio in terminis* if the provisions of Article 143 paragraph (4) and the Elucidation of Article 143 of the Criminal Procedure Code are connected with the provisions of Article 140 paragraph (1) of the Criminal Procedure Code, namely the obligation of the public prosecutor when transferring a case to the district court must provide copies of the case files resulting from the investigation by the investigator returns to the investigator, whereas before the public prosecutor delegates the case to the district court, the investigator first gives the case dossiers the results of his investigation to the public prosecutor. This also confirms Article 143 paragraph (4) and the Elucidation of Article 143 of the Criminal Procedure Code creates legal uncertainty.

#### 4. Conclusion

Case files are documents used by suspects or defendants or convicts to prepare defenses in criminal cases. Unfortunately, the rights to case files regulated in the Criminal Procedure Code are unclear where Article 72 of the Criminal Procedure Code places the case file as a (negative) right that is given to the suspect if requested, while Article 143 paragraph (4) of the Criminal Procedure Code places the case file as a (positive) right that must be given the public prosecutor when the public prosecutor delegates the case to the court.

Given the importance of the function of case files for suspects or defendants or convicts, Article 72 of the Criminal Procedure Code is revised so that it reads "At the request of the suspect or accused or convict or their attorney or legal adviser, the official concerned provides derivative minutes of examination proceedings for the benefit of his defense", and the explanation of Article 143 is revised so that it reads "what is meant by the letter of case delegation is the letter of delegation of the case

itself complete with the indictment and case files, but for the case files given at the request of the suspect or his attorney or his legal adviser to the public prosecutor". Such a formulation is a more definite formulation while taking into account the economic approach or benefits and costs in the criminal justice process. The rights of suspects or defendants or convicts to case files are still protected and on the one hand the state is not burdened with the obligation to provide thousands of case files to suspects at the prosecution stage.

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