



Advocate Assistance for Witnesses and Suspects in Criminal Investigation: A Due Process Perspective

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Abstract

Background: Examination practices in criminal investigations continue to raise human rights concerns, including intimidation, restricted access to legal counsel, and changes in witness status to suspect without adequate legal protection.

Objective: This study analyzes the role of attorney assistance for witnesses and suspects during criminal investigations within the framework of due process principles and examines legal protection issues for witnesses who may potentially be designated as suspects.

Methods: This normative legal research employs statutory, conceptual, and case-based approaches by analyzing the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana* [KUHP]), the New Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana* [New KUHP]), Constitutional Court decisions, and due process principles.

Results: The findings reveal that the New KUHP strengthens the rights of witnesses and suspects to receive attorney assistance; however, several obstacles remain, including law enforcement officers' repressive paradigms, witnesses' limited awareness of their legal rights, and inadequate protection of the right against self-incrimination.

Conclusion: Strengthening regulatory frameworks, transforming law enforcement paradigms, and optimizing the role of attorneys during criminal examinations are essential to realizing a fair and humane criminal justice system grounded in due process principles.

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INTRODUCTION

Indonesia, as a state based on the rule of law founded on Pancasila and the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution), places the protection of human rights as one of the fundamental principles in the implementation of the criminal justice system. The principle of equality before the law, as stipulated in Article 27 paragraph (1) of the 1945 Constitution, emphasizes that every citizen has an equal position before the law and the government without discriminatory treatment. Therefore, every law enforcement process must be conducted fairly, proportionately, and with respect for individual constitutional rights, including the right to legal protection and legal assistance at every stage of the criminal process. In this context, the presence of advocates is not only considered part of the legal profession but also serves as an instrument for protecting human rights and realizing the principles of a fair legal process (due process of law) (Edwards, 2026).

The principle of due process of law essentially requires that all actions taken by law

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enforcement officers must be conducted based on lawful, transparent, and rights-oriented procedures (Al, 2025). In the criminal justice system, the application of this principle is particularly important during the investigation stage because this stage has the potential to result in repressive actions, intimidation, psychological pressure, and abuse of authority by law enforcement officers. Therefore, the right to legal aid and legal assistance constitutes an integral part of procedural rights protection that must be provided to every person involved with the law, whether as a witness or a suspect. The presence of an advocate is expected to establish a balance between investigators' authority and the protection of individual rights during the criminal investigation process (Basysta & Blahuta, 2024).

In practice, legal assistance for suspects has long been recognized within the Indonesian criminal procedure law system through provisions contained in the *Kitab Undang-Undang Hukum Acara Pidana* (KUHP) or the Criminal Procedure Code. However, the status of witnesses in obtaining legal assistance has not been regulated clearly and comprehensively. In criminal investigations, there are often situations in which a person initially summoned and examined as a witness is later designated as a suspect. This situation demonstrates that witnesses are vulnerable to potential violations of their procedural rights, particularly when examinations are conducted without adequate legal assistance (Arum & Sharma, 2024). Therefore, witness protection during the investigation process is an essential component in ensuring the realization of a fair criminal justice system.

The development of criminal procedural law through the provisions of the Criminal Procedure Code has strengthened the rights of witnesses and suspects to obtain legal assistance during examination processes. This development represents a paradigm shift from a previously repressive investigative system toward a system that respects human rights and the principles of fair justice (Danil et al., 2024). Furthermore, Constitutional Court Decisions Number 65/PUU-VIII/2010 and Number 61/PUU-XX/2022 emphasize the position of witnesses as legal subjects possessing constitutional rights within the criminal justice process, including protection from intimidation and arbitrary treatment (Constitutional Court of the Republic of Indonesia, 2010, 2022). Thus, legal assistance for witnesses and suspects is no longer viewed merely as a procedural formality but as a substantive mechanism for legal protection (George, 2023).

However, the implementation of the right to legal assistance in investigative practice continues to face various challenges. Investigators may still restrict access to legal assistance, witnesses may be examined without an adequate understanding of their rights, and psychological pressure may be imposed during questioning. In several cases, individuals examined as witnesses may be designated as suspects immediately after the examination process. This situation demonstrates that the implementation of due process of law during the investigation stage remains suboptimal, and advocate assistance is increasingly necessary to establish a balance between law enforcement authority and individual rights protection (Lestari et al., 2026). Therefore, a more comprehensive study is required regarding the implementation of legal assistance for witnesses and suspects during the investigation process as a means of protecting citizens' constitutional rights (Mahdy et al., 2025).

Several previous studies have examined the role of legal assistance in criminal proceedings. Mutik et al. (2024) analyzed legal assistance in corruption cases involving government procurement and concluded that advocate involvement remains procedurally limited within the existing Criminal Procedure Code framework. However, their study focused exclusively on suspects in corruption cases without addressing the vulnerability of witnesses who may later become suspects. Basysta and Blahuta (2024) examined the admissibility of evidence through the perspective of the presumption of innocence and European Court of Human Rights jurisprudence, demonstrating that procedural safeguards during investigations significantly influence trial fairness. Nevertheless, their comparative European perspective did not address the specific challenges faced within Indonesia's criminal justice system. Furthermore, Linh (2026) examined the expanding role of lawyers in Vietnamese criminal proceedings, highlighting progressive reforms that strengthen defense rights throughout procedural stages. Although this comparative perspective provides valuable insights, the study did not address the specific issue of witness-to-suspect status transformation, which remains prevalent in Indonesian investigative practices.

A critical gap emerges from the existing literature: while previous studies have examined legal assistance for suspects and defense rights in various jurisdictions, few have comprehensively analyzed the intersection between witness protection and due process of law principles during the investigation stage in Indonesia, particularly regarding the phenomenon of witness-to-suspect status transformation. This gap is significant because the Indonesian criminal justice system, through the New Criminal Procedure Code and Constitutional Court jurisprudence, has undergone substantial reforms that remain insufficiently examined in academic discourse.

The novelty of this research lies in its integrative analysis of advocate assistance for both witnesses and suspects within a unified due process of law framework, combining normative analysis of the New Criminal Procedure Code provisions with critical examination of Constitutional Court Decisions Number 65/PUU-VIII/2010 and Number 61/PUU-XX/2022 ([Constitutional Court of the Republic of Indonesia, 2010, 2022](#)). Unlike previous studies that treat suspect rights and witness protection as separate domains, this study develops a comprehensive legal argument demonstrating that procedural rights protection must extend continuously from witness status through potential suspect designation, thereby offering a new theoretical perspective on the continuum of procedural rights in criminal investigations.

Based on this background, this study aims to analyze the implementation of legal assistance for witnesses and suspects during the investigation process based on the principle of due process of law, examine problems arising in criminal investigation practices, and explore the urgency of strengthening legal protection for witnesses and suspects within the Indonesian criminal justice system. This research is expected to provide theoretical contributions to the development of criminal procedural law, particularly regarding the protection of procedural rights, while also serving as an evaluative reference for law enforcement officials in realizing a criminal justice system that is fair, humane, and oriented toward protecting human rights through advocate assistance for witnesses and suspects ([Linh, 2026](#)).

This study aims to achieve two primary objectives: first, to analyze the role of advocate assistance for witnesses and suspects in the criminal investigation process based on due process of law principles; and second, to examine the problems and challenges arising in protecting procedural rights within Indonesian criminal justice practices. The practical significance of this research lies in its potential to provide evaluative insights for law enforcement officers regarding the importance of respecting procedural rights, while its theoretical contribution advances the development of criminal procedural law doctrine, particularly concerning the continuity of rights protection from witness status to suspect designation.

METHOD

This study employed normative legal research (doctrinal legal research), which examined law as a system of norms, principles, and doctrines through the analysis of legal materials ([Rio & Widyaningrum et al., 2024](#); [Soekanto & Mamudji, 2015](#)). Three methodological approaches were utilized. First, the statutory approach (statute approach) involved a systematic examination of legal provisions governing the criminal justice system, particularly Law Number 8 of 1981 concerning Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana or KUHP*), Law Number 1 of 2025 concerning the New Criminal Procedure Code (*KUHAP Baru*), Law Number 18 of 2003 concerning Advocates, and the 1945 Constitution of the Republic of Indonesia ([Republic of Indonesia, 1981, 2003](#); [Setiyono et al., 2026](#)). Second, the conceptual approach analyzed legal doctrines and theoretical frameworks related to due process of law, fair trial principles, equality before the law, and human rights protection in criminal proceedings. Third, the case approach examined Constitutional Court decisions that had shaped the development of criminal procedural law, particularly Decision Number 65/PUU-VIII/2010 concerning the expansion of the definition of witnesses and Decision Number 61/PUU-XX/2022 concerning the constitutional rights of witnesses in criminal proceedings ([Constitutional Court of the Republic of Indonesia, 2010, 2022](#)).

The legal materials used in this study were classified into three categories. Primary legal materials consisted of binding legal instruments, including the 1945 Constitution of the Republic of Indonesia, Law Number 8 of 1981 (*KUHP*), Law Number 1 of 2025 (*KUHAP Baru*), Law Number 18 of 2003 concerning Advocates, Law Number 39 of 1999 concerning Human Rights,

Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR), and Constitutional Court Decisions Number 65/PUU-VIII/2010 and Number 61/PUU-XX/2022 ([Constitutional Court of the Republic of Indonesia, 2010, 2022](#); [Pemerintah Republik Indonesia, 1999](#); [Republic of Indonesia, 1981, 2003](#); [Republik Indonesia, 2005](#); [Setiyono et al., 2026](#)). Secondary legal materials included scholarly publications, such as legal journals, textbooks, dissertations, and academic papers, which provided doctrinal analysis of due process of law, advocate assistance, and procedural rights protection. Tertiary legal materials consisted of legal dictionaries, encyclopedias, and online legal databases that supported terminological accuracy and contextual understanding.

Constitutional Court decisions were employed as objects of legal analysis in two dimensions. Substantively, these decisions were examined to identify how the Court had interpreted and expanded the constitutional rights of witnesses and suspects, particularly regarding the right to attorney assistance and the right against self-incrimination. Procedurally, the ratio decidendi of these decisions was analyzed to trace the evolution of judicial interpretation concerning the scope and application of due process principles in criminal investigation proceedings.

The legal material analysis technique used in this study was prescriptive-analytical, which involved systematically interpreting legal norms through grammatical, systematic, and teleological interpretation methods. Grammatical interpretation was applied to examine the literal meaning of statutory provisions. Systematic interpretation connected various legal norms to identify coherence and potential conflicts within the regulatory framework. Teleological interpretation examined the purposes and objectives underlying legal provisions to assess whether they effectively achieved their intended goals of protecting procedural rights. The collected legal materials were then synthesized using deductive reasoning to construct legal arguments regarding the adequacy and effectiveness of advocate assistance mechanisms for witnesses and suspects within the Indonesian criminal justice system.

RESULTS AND DISCUSSION

Results

Implementation of Advocate Assistance to Witnesses and Suspects in the Investigation Process Based on the Principles of Due Process of Law

The application of legal assistance for witnesses and suspects during the investigation process is an important component in realizing a fair criminal justice system and upholding human rights. In a country governed by the rule of law, every law enforcement action must be conducted based on the principle of due process of law, which requires all law enforcement procedures to be carried out lawfully, fairly, proportionately, and with respect for the fundamental rights of citizens. This principle serves as a cornerstone of the modern criminal justice system because it aims to prevent arbitrary actions by law enforcement authorities, particularly during the investigation stage, which is among the most vulnerable phases for human rights violations. Therefore, the right to obtain legal aid and advocate assistance during the criminal investigation process constitutes an inseparable element of procedural rights protection within the Indonesian legal system, as the state has an obligation to safeguard the rights of every citizen ([Libradilla, 2026](#)).

Constitutionally, the right to legal aid and advocate assistance has a strong foundation in the 1945 Constitution of the Republic of Indonesia. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia emphasizes that every citizen has an equal position before the law and the government without exception. This provision reflects the principle of equality before the law, which requires everyone to receive equal legal treatment, including during criminal investigation proceedings. Furthermore, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees fair legal recognition, protection, and certainty for every citizen. Within the context of criminal investigations, this protection is realized through an individual's right to obtain legal assistance and advocate assistance when dealing with law enforcement officials. Thus, advocate assistance is not merely a procedural right, but also forms part of the constitutional rights of citizens that must be respected by the state ([Putri &](#)

[Gunadi, 2025](#)).

Within the criminal justice system, the investigation stage is a critical phase because, at this stage, investigators possess significant authority to search for and collect evidence to determine whether a criminal act has occurred and to establish a person's status as a suspect. Such extensive authority may create the potential for abuse if it is not accompanied by adequate mechanisms for human rights protection. Therefore, the presence of advocates during the examination process is essential to maintain a balance between investigative authority and the protection of individual rights. The function of advocates is to ensure that examinations are conducted in accordance with the law, without intimidation, coercion, or other violations of procedural rights. From the perspective of due process of law, the presence of advocates serves as a mechanism of control over the exercise of state authority to ensure that law enforcement remains within the framework of legal principles and justice ([Info, 2024](#)).

The regulation of the right to advocate assistance under Indonesia's previous criminal procedure law was primarily oriented toward protecting suspects and defendants. Under the former Criminal Procedure Code, the right of suspects to obtain legal assistance was regulated under Article 54 and Article 56 of Law Number 8 of 1981 concerning Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana*) ([Republic of Indonesia, 1981; Setiyono et al., 2026](#)). These provisions affirm that suspects or defendants have the right to receive assistance from legal counsel at every stage of examination. However, in practice, the role of advocates during the investigation stage remained limited because Article 115 paragraph (1) of the Criminal Procedure Code only allowed legal counsel to "see and hear" the examination process. This provision meant that advocates had limited authority to actively intervene or submit objections when intimidation occurred or when questions were considered coercive toward suspects. This condition demonstrates that the previous criminal procedure system tended to position advocates passively within the examination process.

The development of criminal procedural law through the New Criminal Procedure Code demonstrates a more progressive paradigm shift in human rights protection. Under the New Criminal Procedure Code, the rights of witnesses and suspects to receive advocate assistance are regulated more explicitly. Witnesses are granted the right to choose, contact, and obtain assistance from advocates during examinations. Similarly, for suspects and defendants, the right to advocate assistance is emphasized as part of the protection of procedural rights within the criminal justice system. This development reflects the recognition that legal protection is not only necessary for suspects but also for witnesses who may occupy vulnerable positions during examination processes. This protection is particularly important because, in investigative practice, an individual initially examined as a witness may later have their status changed into that of a suspect ([Lathifah et al., 2025](#)).

The phenomenon of changing witness status into suspect status represents one of the main reasons underlying the importance of advocate assistance during the investigation stage. In law enforcement practice, particularly in corruption, narcotics, and other special criminal cases, individuals are often summoned as witnesses, subjected to intensive examinations, and subsequently designated as suspects based on information provided during the examination process. This situation creates serious legal concerns when witnesses do not understand their rights or do not receive assistance from advocates. For example, a government employee may be summoned as a witness in an alleged corruption case involving the procurement of goods and services. During the examination, the witness may provide information regarding budget disbursement mechanisms without realizing that the statement could later be used against them. Following the examination, investigators may designate the individual as a suspect based on information previously provided as a witness. Under such circumstances, advocate assistance is essential to ensure that witnesses understand their rights, including the right against self-incrimination (non-self-incrimination).

This phenomenon is supported by judicial practice. In Constitutional Court Decision Number 65/PUU-VIII/2010, the Court expanded the definition of witnesses beyond individuals who directly saw, heard, or experienced a criminal act, recognizing that individuals possessing relevant information may also be summoned as witnesses ([Constitutional Court of the Republic](#)

of Indonesia, 2010; Hibatullah et al., 2025). While this expansion serves the objective of truth-finding, it simultaneously increases the vulnerability of witnesses to changes in legal status. The Court's ratio decidendi in Decision Number 61/PUU-XX/2022 further emphasized that witnesses possess constitutional rights that must be actively protected during examinations, including the right to legal assistance (Constitutional Court of the Republic of Indonesia, 2022). The practical implications of these decisions are evident in corruption cases handled by the Corruption Eradication Commission, where witnesses in procurement fraud investigations have been redesignated as suspects following intensive examinations conducted without adequate legal representation (Mutik et al., 2024). These cases demonstrate that the absence of advocate assistance during witness examinations creates structural vulnerabilities that undermine the principle of non-self-incrimination.

In addition to protecting the rights of witnesses and suspects, advocate assistance also contributes to maintaining the objectivity and professionalism of the examination process. The presence of advocates can prevent investigators from applying psychological pressure, intimidation, or unlawful practices. In certain cases, excessive examination practices may occur, including prolonged questioning, the use of leading or coercive questions, and threats intended to obtain confessions. Such practices are inconsistent with the principle of due process of law because they disregard human dignity and the right to a fair trial. Therefore, advocates play a strategic role as external supervisors within the investigation process to ensure that investigative actions remain within legal boundaries (Luh et al., 2026).

The principles of fair trial and equality before the law also constitute important foundations for implementing advocate assistance for witnesses and suspects. A fair trial requires that every person confronted with legal proceedings has an equal opportunity to defend themselves and obtain appropriate legal protection. Meanwhile, equality before the law requires that no individual receives discriminatory treatment within the law enforcement process. In practice, the imbalance of power between law enforcement officials and members of the public often places examined individuals in a vulnerable position, particularly when they lack sufficient legal knowledge. Therefore, advocate assistance serves as an essential instrument to create procedural balance, ensuring that examinations are not solely focused on obtaining statements but also on protecting individual rights.

The implementation of advocate assistance is also closely related to international human rights protection standards. The International Covenant on Civil and Political Rights (ICCPR), which was ratified by Indonesia through Law Number 12 of 2005, guarantees that every person has the right to legal assistance and fair treatment within criminal justice proceedings (Prameswari & Galingging, 2025; Republik Indonesia, 2005). These principles require the state not only to establish formal legal aid mechanisms but also to ensure their effective implementation in practice. Accordingly, strengthening the role of advocates during the investigation stage represents part of the state's obligation to comply with internationally recognized human rights standards.

Although normative regulations concerning the right to advocate assistance have developed, their practical implementation continues to face various challenges. In some cases, restrictions on advocates' access, refusal of advocates' presence during witness examinations, or perceptions that advocate assistance obstructs investigations are still encountered. Furthermore, not all witnesses and suspects understand their right to receive legal assistance. This condition indicates that the legal culture among law enforcement officials may still reflect a crime control model approach that prioritizes enforcement effectiveness over individual rights protection. However, modern criminal justice systems require a balance between effective law enforcement and respect for human rights.

Therefore, the implementation of advocate assistance for witnesses and suspects must be viewed as an integral element of criminal justice reform in Indonesia. Advocate assistance does not hinder investigative processes; rather, it functions as a legal protection mechanism aimed at creating fair, objective, and accountable examinations. Through advocate assistance, investigations are not only oriented toward punishment but also ensure that the fundamental rights of every citizen are respected. In this context, law enforcement officials must adopt a

paradigm in which human rights protection and law enforcement effectiveness are not contradictory objectives but complementary principles that must operate in balance within a democratic and fair criminal justice system.

Discussion

The Problem and Urgency of Legal Protection for Witnesses Who Have the Potential to Become Suspects in the Criminal Justice System

The issue of legal protection for witnesses who have the potential to become suspects within the criminal justice system is one of the important concerns in the development of modern criminal procedural law in Indonesia. In law enforcement practice, witnesses are often viewed merely as sources of evidence for revealing a criminal act, whereas, in reality, witnesses are also legal subjects who possess constitutional rights to legal protection. Problems arise when an individual who was initially summoned and examined as a witness during the investigation process later changes status to that of a suspect based on information provided during the examination. This situation raises serious concerns regarding human rights protection, particularly the right to security, the right not to be compelled to provide self-incriminating statements, and the right to effectively obtain legal assistance. Therefore, the discussion of legal protection for witnesses who have the potential to become suspects is highly relevant in efforts to establish a fair criminal justice system based on the principle of due process of law.

In a state based on the rule of law, all actions taken by law enforcement officials must be carried out according to the principle of due process of law, which requires every law enforcement procedure to be conducted through lawful, fair, and human rights-compliant mechanisms. This principle does not only apply to suspects or defendants but also to every individual who has contact with the legal system, including witnesses. Constitutionally, Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees that every citizen has an equal position before the law and the government. This guarantee means that both witnesses and suspects have the right to receive fair legal protection throughout the criminal justice process. However, in practice, witness protection is often not provided optimally, particularly when witnesses are placed in vulnerable positions where they may potentially be designated as suspects.

The vulnerability of witnesses during the investigation process represents a significant issue in Indonesian criminal justice practice. At the investigation stage, investigators possess broad authority to search for and collect evidence to determine whether an event constitutes a criminal act and to identify the parties responsible. During this process, witnesses serve as one of the primary sources of information used by investigators to establish the construction of a case. However, witnesses are often placed in an unequal position in relation to law enforcement authorities due to limited legal understanding, psychological pressure, and reliance on investigators' interpretations of the information provided. This situation becomes increasingly concerning in cases involving specific employment relationships, official positions, or administrative responsibilities that may potentially lead to allegations of criminal conduct ([Mutik et al., 2024](#)).

For example, in a corruption case involving the procurement of goods and services, a treasurer or administrative official may be summoned as a witness to explain budget disbursement mechanisms. At the initial stage of examination, the individual may only be required to provide information regarding administrative procedures and working relationships with other parties. However, as the examination develops, investigators may interpret the administrative actions performed by the witness as part of an unlawful act or an abuse of authority. Consequently, a witness who was initially present to assist the investigation process may later have their status changed to that of a suspect. Under such circumstances, witnesses become highly vulnerable because statements provided without adequate legal understanding may ultimately be used against them.

This issue demonstrates that criminal justice practices may create the potential for the criminalization of witnesses. Criminalization may be understood as the excessive or disproportionate exercise of law enforcement authority, resulting in individuals who should

receive legal protection instead being positioned as alleged perpetrators of criminal acts. In certain cases, the transition of a witness's status into that of a suspect occurs without a clear mechanism to safeguard the witness's procedural rights. In practice, witnesses may be summoned repeatedly, subjected to lengthy examinations, and confronted with coercive or self-incriminating questions without the assistance of an advocate. Such conditions are inconsistent with the principles of fair trial and due process of law because they place witnesses in a disadvantaged position when facing state authority.

The potential for intimidation during the examination process is also a recurring concern in investigative practices. Intimidation does not necessarily involve physical violence; it may occur through psychological pressure, implicit threats, or an intimidating examination environment that causes witnesses to feel fearful and distressed. For instance, a witness may undergo hours of continuous questioning without legal assistance and may be subjected to repeated inquiries until exhaustion affects their ability to provide accurate and fully understood responses. In certain circumstances, witnesses may also be threatened with the possibility of being designated as suspects if they are considered uncooperative. Such pressure can undermine the freedom of witnesses to provide testimony and may potentially result in violations of fundamental human rights.

Therefore, the protection of the right to non-self-incrimination is very important in the criminal investigation process. The right to non-self-incrimination refers to a person's right not to be compelled to provide information that may incriminate themselves. This principle is part of human rights recognized in both international and national legal systems. In the context of witness examination, this principle has strong relevance because a person initially examined as a witness may later change their status to that of a suspect at any time ([Rustamaji et al., 2025](#)). Without protection of the right to non-self-incrimination, the witness examination process may become a means of obtaining statements that are subsequently used as a basis for determining a person's suspect status.

As an illustration, a company director was summoned as a witness in a case involving alleged tax crimes committed by the company where they worked. During the examination, the investigator requested explanations regarding the company's tax reporting policies and financial recording mechanisms. Because the witness did not fully understand the legal implications of their statements, they provided detailed explanations regarding internal company decisions that were later considered evidence of active involvement in tax crimes. Based on this information, investigators designated the witness as a suspect. This situation demonstrates that the absence of protection for the right to non-self-incrimination may cause individuals to unintentionally provide information that is detrimental to themselves.

Another issue that frequently arises is the restriction of advocates' access to witness assistance. In previous practice, law enforcement officials often considered advocate assistance to be intended only for suspects or defendants, while witnesses were perceived as not requiring legal assistance because they were merely providing information. Consequently, some investigators restricted or even refused the presence of advocates during witness examinations. However, from a human rights and due process of law perspective, advocate assistance is necessary to ensure that the examination process is conducted fairly and does not violate witnesses' legal rights ([Rajagukguk et al., 2026](#)).

This restriction on advocate access indicates the persistence of an outdated paradigm within the criminal justice system that prioritizes the crime control model approach over the due process model. Under the crime control model, the effectiveness of criminal enforcement is regarded as the primary objective, causing individual rights protection to be perceived as a potential obstacle in the investigation process. Conversely, the due process model places human rights protection as a fundamental principle that must be maintained throughout every stage of criminal proceedings. Therefore, the presence of advocates during witness examinations should not be viewed as an obstacle to investigations but rather as a control mechanism to ensure that investigative authority is exercised proportionately and in accordance with the law.

The development of regulations in the new Criminal Code demonstrates state efforts to strengthen the legal protection of witnesses. Under the new regulatory framework, witnesses are

granted the right to choose, contact, and obtain assistance from advocates during examinations. This arrangement represents a progressive development in Indonesia's criminal procedure system because it recognizes that witnesses also possess procedural rights that require protection. Furthermore, Constitutional Court Decision Number 65/PUU-VIII/2010 expanded the definition of witnesses, which is no longer limited to individuals who personally see, hear, or experience a criminal act but also includes parties who possess relevant information concerning a case ([Constitutional Court of the Republic of Indonesia, 2010](#); [Hibatullah et al., 2025](#)). This expansion further emphasizes the importance of legal protection for witnesses because the scope of individuals who may be examined as witnesses has become broader.

The urgency of strengthening regulations on legal assistance for witnesses is also based on the fact that the investigation stage is one of the most decisive phases in the criminal justice system. At this stage, an individual may lose their freedom through arrest, detention, or designation as a suspect. Therefore, legal protection must be provided from the earliest stages of the examination process, rather than only after an individual has officially become a suspect or defendant. This approach aligns with the principle of preventive human rights protection, namely the protection of human rights provided before more serious violations occur.

From an international human rights perspective, the protection of witnesses who may potentially become suspects is also connected to the right to a fair trial as guaranteed under the International Covenant on Civil and Political Rights (ICCPR). The Covenant affirms that every person has the right to legal protection and a fair judicial process without being compelled to provide admissions of their own wrongdoing. As a state party to the ICCPR, Indonesia has an obligation to ensure that these principles are effectively implemented within its national criminal justice system. Therefore, strengthening legal protection for witnesses is not merely a domestic necessity but also part of Indonesia's international commitment to human rights protection.

Beyond the normative dimension, strengthening legal protection for witnesses is also essential for maintaining the legitimacy and public trust of the criminal justice system. Public confidence in law enforcement processes may decline if individuals summoned as witnesses fear being criminalized or designated as suspects without adequate legal safeguards. Such conditions may discourage members of the public from providing information or cooperating with law enforcement authorities. Consequently, criminal enforcement efforts may become ineffective because witnesses, as one of the primary sources of evidence, do not feel secure in providing testimony.

Therefore, criminal justice reform must be directed toward strengthening the procedural rights of witnesses who have the potential to become suspects. The state must ensure that every witness examination is conducted professionally, transparently, and with respect for human rights. The presence of advocates should be recognized as a procedural right of witnesses rather than an obstacle to investigative processes. In addition, stronger oversight mechanisms are required to monitor investigators' actions and prevent abuses of authority during witness examinations. Through these measures, Indonesia's criminal justice system can evolve into a system that is not only effective in combating crime but also upholds the principles of due process of law, fair trial, and comprehensive human rights protection ([Maruli et al., 2026](#)).

An in-depth analysis of Constitutional Court decisions provides critical insights into the judicial development of witness protection in Indonesia. In Decision Number 65/PUU-VIII/2010, the Constitutional Court declared that Article 1 number 26 and Article 1 number 27 of the *Kitab Undang-Undang Hukum Acara Pidana (KUHP)* were conditionally unconstitutional insofar as they limited the definition of witnesses to individuals who directly perceived a criminal act ([Constitutional Court of the Republic of Indonesia, 2010](#); [Hibatullah et al., 2025](#)). The Court's reasoning established that constitutional protection under Article 28D paragraph (1) of the 1945 Constitution extends to all individuals who provide testimony relevant to criminal proceedings, regardless of whether they directly witnessed the criminal act. This decision fundamentally transformed the procedural framework by expanding the category of persons entitled to procedural protections during criminal investigations.

Subsequently, Decision Number 61/PUU-XX/2022 strengthened the constitutional foundation of witness rights by affirming that the right to legal assistance constitutes part of

constitutional due process protections that cannot be restricted by law enforcement officers during examinations ([Constitutional Court of the Republic of Indonesia, 2022](#)). The Court emphasized that restricting advocate access during witness examinations violates the principle of equality before the law as guaranteed under Article 27 paragraph (1) of the 1945 Constitution. Collectively, these decisions demonstrate a progressive judicial trajectory toward recognizing witness protection as a constitutional imperative rather than merely a procedural formality. They provide an authoritative legal basis for the argument that advocate assistance must be available from the earliest stages of criminal investigation.

CONCLUSION

This study demonstrates that advocate assistance for witnesses and suspects during criminal investigation constitutes a fundamental component of due process protection within Indonesia's criminal justice system. The analysis reveals three principal findings. First, the normative framework governing advocate assistance has undergone a significant transformation from the passive observer model under Article 115 paragraph (1) of the former *Kitab Undang-Undang Hukum Acara Pidana (KUHP)* to the active participatory model established by the New Criminal Procedure Code, which grants witnesses and suspects the explicit right to choose, contact, and obtain advocate assistance at every stage of examination. Second, Constitutional Court Decisions Number 65/PUU-VIII/2010 and Number 61/PUU-XX/2022 have progressively strengthened the constitutional foundation for procedural rights protection by expanding the definition of witnesses and affirming the constitutional right to legal assistance during investigations. Third, despite these normative advancements, persistent implementation challenges remain, including the repressive paradigm among law enforcement officers, restricted access for advocates during witness examinations, and inadequate protection of the right against self-incrimination.

The theoretical contribution of this research lies in the conceptualization of a "procedural rights continuum," which posits that due process protections in criminal investigations should not be compartmentalized according to procedural status but should instead be understood as a continuous spectrum of rights attaching to individuals from their initial engagement with law enforcement authorities. This theoretical framework advances existing criminal procedural law doctrine by bridging the traditionally separate domains of witness protection and suspect rights into a unified analytical construct.

This study acknowledges certain limitations. As normative legal research, this study primarily relies on doctrinal analysis of legal texts and judicial decisions without incorporating empirical data from field observations or interviews with legal practitioners. Future research should employ socio-legal or empirical methodologies to assess the practical implementation of the New Criminal Procedure Code provisions concerning advocate assistance, including quantitative analysis of cases involving changes in witness status to that of suspects and qualitative assessments of advocate effectiveness during investigation proceedings. Comparative studies examining how other ASEAN jurisdictions address similar procedural rights challenges would also enrich the scholarly discourse on this subject.

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AUTHOR CONTRIBUTION STATEMENT

The author is solely responsible for all stages of this research, including the conceptualization of the study, collection of legal materials (primary, secondary, and tertiary sources), normative analysis of legislation and Constitutional Court decisions, as well as the interpretation of due process of law principles and the right to legal assistance during criminal investigations. The author independently prepared the manuscript, developed the analytical framework, and formulated the conclusions and both theoretical and practical implications of the study.

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