



JLPH:
**Journal of Law, Politic
and Humanities**

<https://dinastires.org/JLPH> dinasti.info@gmail.com +62 811 7404 455

DOI: <https://doi.org/10.38035/jlph.v6i5>
<https://creativecommons.org/licenses/by/4.0/>

E-ISSN: 2962-2816
P-ISSN: 2747-1985

Constitutional Failure of The State In Protecting Witnesses: The Perspective of The Pancasila Rule of Law and The Reform of The Criminal Procedure Code

RR. Duni Nirbayati^{1*}, Agus Surono², Adnan Hamid³, Andi Wahyu Wibisana⁴

¹ Faculty of Law, Pancasila University, Indonesia. Email: doeny@ymail.com

² Faculty of Law, Pancasila University, Indonesia. Email: agussurono@univpancasila.ac.id

³ Faculty of Law, Pancasila University, Indonesia. Email: adnanhamid@univpancasila.ac.id

⁴ Faculty of Law, Pancasila University, Indonesia. Email: andiwahyu@univpancasila.ac.id

*Corresponding Author: doeny@ymail.com

Abstract: This article examines whether the absence of legal provisions guaranteeing the right of witnesses to obtain legal assistance from advocates within Indonesia's criminal justice system constitutes a constitutional failure of the State to fulfill its obligations as a Pancasila-based rule of law, and how Law Number 20 of 2025 on the Criminal Procedure Code (KUHAP) responds to that failure. This study employs a doctrinal legal research method using statutory, conceptual, and historical approaches. The analysis demonstrates that for more than four decades, Article 54 of Law Number 8 of 1981 granted the right to legal assistance by an advocate exclusively to suspects and defendants, while witnesses who bear legal obligations imposed by the State were denied equivalent normative protection. This legal gap is inconsistent with the State's positive obligations under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia and with the principles of the Pancasila Rule of Law, which place the balance between rights and obligations at the core of the legal system. Law Number 20 of 2025 represents a significant constitutional correction. However, its effectiveness will depend on the transformation of the legal culture among law enforcement officials, the effective enforcement of sanctions, and the expansion of access to free legal aid for indigent witnesses.

Keyword: Legal Aid; Witness Rights; Criminal Procedure Code (KUHAP); Pancasila Rule of Law; State Constitutional Responsibility.

INTRODUCTION

The criminal justice system is fundamentally oriented toward the pursuit of material truth, namely the fullest possible truth concerning a criminal case based on facts obtained through fair and lawful procedures. To achieve this objective, witnesses occupy a highly strategic position because witness testimony constitutes one of the most important and frequently relied upon forms of evidence in judicial practice. The Constitutional Court of the Republic of Indonesia further broadened the legal meaning of a witness through Constitutional Court Decision No. 65/PUU-VIII/2010 by recognizing that a witness may also include a person

who provides information that he or she did not necessarily hear, see, or personally experience, provided that such information is relevant to the case under examination (Constitutional Court of the Republic of Indonesia, 2011, p. 89). This expansion further reinforces the central role of witnesses in the construction of truth within Indonesia's judicial process (Kurniawan et al., 2020).

The position of witnesses becomes even more crucial when it is understood that witness testimony is ranked first among the categories of evidence recognized under Indonesian criminal procedural law (Law No. 8 of 1981, art. 184(1)(a)). Without testimony that is truthful, accurate, and free from coercion, a criminal case can never be fully uncovered, and any resulting judgment risks departing from substantive justice (Hamzah, 2016, p. 259). Ironically, despite their indispensable role, witnesses are frequently examined under conditions characterized by profound inequality. They confront state authorities vested with extensive coercive powers without the assistance of legal counsel capable of explaining their legal rights and obligations. This structural imbalance constitutes the central concern of this article, for genuine justice cannot emerge from an unequal relationship between the examiner and the person being examined.

The problem becomes even more pronounced upon closer examination of the Indonesian Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, hereinafter KUHAP), which remained in force for more than four decades without providing witnesses with the right to legal representation by an advocate at any stage of criminal proceedings. Article 54 of Law No. 8 of 1981 expressly granted this right only to suspects and defendants (Law No. 8 of 1981, art. 54). Witnesses including those who may later be designated as suspects during the course of an examination were left within a normative vacuum of legal protection. They were legally obligated to appear when summoned, required to provide testimony, and could even be subjected to compulsory measures if they refused to comply without lawful justification. Nevertheless, the law failed to guarantee their right to be accompanied by an advocate, thereby creating a profound imbalance between the obligations imposed upon witnesses and the legal protections afforded to them (Pangaribuan, 2012, p. 87).

Previous studies have generally examined witness protection from the perspective of Law No. 31 of 2014 concerning the Protection of Witnesses and Victims, which primarily emphasizes physical and psychological protection through the Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban*). Other studies have analyzed legal aid from the standpoint of the rights of indigent suspects and defendants under Law No. 16 of 2011 concerning Legal Aid. Fauzi observed that the interests of witnesses protected under the former KUHAP were regulated only in a highly limited and fragmented manner and did not extend to the dimension of legal representation (Fauzi, 2023). A significant research gap therefore remains regarding the absence of legal provisions governing the right of witnesses to legal assistance as a form of the State's constitutional failure when examined from the perspective of the Pancasila Rule of Law. To date, this issue has not been systematically conceptualized within the existing legal literature.

This gap in the literature constitutes the principal originality of the present article. Existing scholarship has largely remained confined to the technical and procedural level, focusing, for example, on whether witnesses may or may not be accompanied by advocates according to particular statutory interpretations. No previous study has systematically framed the absence of such legal provisions as a manifestation of the State's failure to discharge its constitutional obligations. Such a perspective is essential because it transforms the issue from a mere technical deficiency in legislative drafting into a constitutional problem rooted in the relationship between the State and its citizens. Accordingly, this article seeks to fill that analytical gap by employing the concept of the Pancasila Rule of Law as a constitutional

framework for evaluating witness rights, a perspective that has not previously been used specifically for this purpose (Hadjon, 1987, p. 72).

Substantively, the concept of the Pancasila Rule of Law differs from both the Continental European concept of *Rechtsstaat* and the Anglo-Saxon concept of the *rule of law*. The Pancasila Rule of Law does not merely emphasize limiting governmental power through law; rather, it requires the State to play an active role in realizing a balance between the rights and obligations of every citizen. Whenever the State imposes legal obligations upon an individual, it correspondingly assumes the obligation to protect that individual. In the context of witnesses who are legally required to provide testimony before state authorities, this principle demands that the State guarantee their right to legal representation on an equal footing with other parties involved in criminal proceedings. The failure to fulfill this positive obligation has thus far escaped comprehensive academic scrutiny (Hadjon, 1987, p. 72).

The enactment of Law No. 20 of 2025 concerning the Indonesian Criminal Procedure Code (KUHAP), passed by the House of Representatives on 18 November 2025 and entering into force on 2 January 2026, marks a new chapter in the history of Indonesian criminal procedure. Article 143(b) of the new KUHAP explicitly provides that witnesses have the right to choose, contact, and obtain legal representation by an advocate during every stage of examination (Law No. 20 of 2025, art. 143(b)). This protection was entirely absent from the previous KUHAP, and its introduction signifies a paradigmatic shift from a crime-control model toward a due process model that places greater emphasis on the protection of individual rights. In light of the foregoing discussion, this article formulates two interrelated research questions, which are addressed sequentially in the following sections.

The first research question is whether the absence of legal provisions governing the right of witnesses to obtain legal assistance from an advocate under the former KUHAP constitutes a failure of the State to fulfill its constitutional obligations as a State founded upon the Pancasila Rule of Law. The second research question examines how the reform of the KUHAP through Law No. 20 of 2025 substantively and adequately responds to that failure. These two questions are addressed through a layered framework of analysis, beginning with the theoretical construction of the State's constitutional obligations, followed by an examination of the constitutional failure at the levels of *das sollen* and *das sein*, and culminating in a critical evaluation of the normative corrections introduced by the new legislation (Law No. 20 of 2025, art. 143(b)). Accordingly, this article goes beyond mere description by offering a critical assessment of the practical effectiveness of both the former and the current legal regimes.

The structural vulnerability of witnesses cannot be adequately understood without recognizing that the boundary between the status of a witness and that of a suspect is often fluid in criminal proceedings. A person who is initially summoned as a witness may subsequently be designated as a suspect on the basis of the very testimony he or she provides during examination. Once such a change of status occurs, the testimony already recorded in the official examination report cannot be withdrawn and continues to influence the subsequent stages of the criminal process. It is precisely this situation that makes legal representation by an advocate indispensable from the earliest stage of the proceedings. Without legal counsel capable of explaining the legal implications of every statement made during examination, witnesses effectively navigate a legal process entirely controlled by law enforcement authorities without adequate guidance, while the resulting prejudice is frequently permanent and irreparable (Law No. 8 of 1981, art. 54; Pangaribuan, 2012, p. 87).

A comparison with other legal traditions further highlights the anomaly of the previous legal framework. In the criminal justice systems of many jurisdictions adhering to internationally recognized standards of fair trial, any individual who is questioned and may potentially face legal consequences is entitled to legal assistance from the earliest stage of the proceedings, irrespective of the procedural label formally attached to that person. International

standards embodied in the International Covenant on Civil and Political Rights (ICCPR) recognize the right to legal assistance as an integral component of a fair trial (International Covenant on Civil and Political Rights, art. 14). Although Indonesia ratified the ICCPR through Law No. 12 of 2005, it nevertheless maintained this legislative gap for decades. This inconsistency between Indonesia's international commitments and its domestic legal framework demonstrates that the issue of witness rights extends beyond a merely technical deficiency and instead concerns the integrity of Indonesia as a constitutional state governed by law (United Nations Human Rights Committee, 2007, paras. 9–10).

The significance of this study also lies in the ongoing historical momentum. Indonesia has recently entered a new era of criminal procedure following the entry into force of Law No. 20 of 2025 concerning the Indonesian Criminal Procedure Code (KUHAP) on 2 January 2026. Consequently, scholarly research that critically evaluates the newly enacted provisions is essential to ensure their effective implementation. Studies conducted during periods of legal transition possess strategic value because they can identify potential weaknesses at an early stage, before erroneous practices become entrenched and difficult to reform. Accordingly, this article is not merely retrospective in assessing the constitutional shortcomings of the previous legal regime but is also prospective in offering recommendations to ensure that the constitutional correction introduced by the new KUHAP genuinely enhances legal protection for witnesses, particularly those who are most vulnerable within Indonesia's criminal justice system (Law No. 20 of 2025, art. 143(b)).

To maintain analytical coherence and focus, this article is organized into three interconnected parts. The first part develops the theoretical framework concerning the State's constitutional obligations from the perspective of the Pancasila Rule of Law, which serves as the principal analytical framework throughout the study. The second part examines the normative gap under the former KUHAP by comparing *das sollen* and *das sein* in order to demonstrate that such a gap constitutes a constitutional failure of the State. The third part critically evaluates the constitutional correction introduced by Law No. 20 of 2025, assessing both its normative achievements and the practical challenges associated with its implementation. Finally, the conclusion synthesizes the principal findings of the study and emphasizes its theoretical contribution to the development of Indonesian constitutional law doctrine as well as Indonesian criminal procedure law (Hadjon, 1987, p. 72).

METODE

This study employs a doctrinal legal research method with a prescriptive-analytical orientation. Doctrinal legal research examines law as a normative system by relying upon legal principles, concepts, doctrines, and relevant statutory provisions, which are subsequently subjected to critical evaluation in order to formulate prescriptive legal propositions. Three complementary approaches are employed in this study. First, the statutory approach analyzes the hierarchy of legal norms, beginning with Article 27(1) and Article 28D(1) of the 1945 Constitution of the Republic of Indonesia, followed by Law No. 8 of 1981, Law No. 31 of 2014, Law No. 16 of 2011, and Law No. 20 of 2025. This approach enables an examination of the vertical consistency among legal norms while simultaneously assessing whether subordinate legislation conforms to the constitutional norms that occupy a higher position within the hierarchy of laws (Marzuki, 2016, pp. 133–134; Hadjon & Djatmiati, 2005, p. 14).

Second, the conceptual approach examines the concepts of the Pancasila Rule of Law, the constitutional obligations of the State, positive and negative obligations, and the principle of equality before the law within the context of Indonesian criminal procedure. This approach is essential for constructing a sound theoretical framework before evaluating the applicable legal norms. Third, the historical approach traces the development of legal norms concerning witness protection from the enactment of the 1981 KUHAP to the adoption of the 2025

KUHAP, including subordinate legal instruments that were previously used to address the legislative gap. Primary, secondary, and tertiary legal materials are analyzed qualitatively through grammatical, systematic, historical, and teleological interpretation, combined with legal reasoning to produce conclusions that are academically justifiable and contribute to the development of legal doctrine (Marzuki, 2016, pp. 133–134).

The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law No. 8 of 1981, Law No. 16 of 2011, Law No. 31 of 2014, Law No. 20 of 2025, the International Covenant on Civil and Political Rights (ICCPR) together with its ratifying legislation, and decisions of the Constitutional Court of the Republic of Indonesia that are relevant to the subject matter of this study. Secondary legal materials include textbooks on criminal procedure law and constitutional law, doctoral dissertations and master's theses, as well as peer-reviewed journal articles addressing witness protection, the rule of law, and legal aid. Tertiary legal materials, including legal dictionaries and encyclopedias, are utilized to clarify legal terminology. All legal materials were collected through a systematic and well-documented library research process (Marzuki, 2016, pp. 133–134).

The analysis is conducted through legal reasoning based on deductive syllogistic reasoning, in which the major premise consists of constitutional principles and norms, while the minor premise consists of the criminal procedural provisions being examined. To ensure the validity of the analysis, every legal proposition is cross-verified against authoritative sources and confirmed through repeated examination of the applicable statutory texts. Teleological interpretation is employed to identify the objectives underlying the legal norms governing witness protection, whereas systematic interpretation is used to ensure coherence both among provisions within the same statute and across different legislative instruments. By integrating these approaches and analytical techniques, this study seeks to produce prescriptive legal arguments that go beyond mere description by offering normative evaluations grounded in a robust constitutional foundation (Hadjon & Djatmianti, 2005, p. 14).

RESULTS AND DISCUSSION

The Construction of the State's Constitutional Obligations from the Perspective of the Pancasila Rule of Law

The Pancasila Rule of Law possesses characteristics that fundamentally distinguish it from Western legal traditions. Article 1(3) of the 1945 Constitution of the Republic of Indonesia declares Indonesia to be a state based on the rule of law. However, the concept of the rule of law adopted by Indonesia is not automatically identical to either the Continental European concept of *Rechtsstaat* or the Anglo-Saxon concept of the *rule of law*. Philipus M. Hadjon argues that the Pancasila Rule of Law is founded upon the principles of kinship (*kekeluargaan*) and social harmony (*kerukunan*), under which the relationship between the government and the people is built upon harmony and balance rather than upon confrontation between the individual and the State. Accordingly, the central objective of this concept is not merely the protection of individual rights, as emphasized in liberalism, but the realization of a balanced relationship between the rights and obligations of every citizen within a harmonious relationship with the State (Hadjon, 1987, pp. 82–84; Andriawan, 2022).

This distinctive characteristic carries far-reaching theoretical implications. Whereas the classical concept of *Rechtsstaat* primarily emphasizes limiting governmental power to prevent violations of individual rights, the Pancasila Rule of Law requires considerably more. It demands the active presence of the State to ensure that such balance is genuinely realized. Consequently, the State may not remain passive by merely refraining from infringing upon individual rights. Rather, it is required to establish concrete mechanisms, procedures, and guarantees that enable every citizen to enjoy his or her rights in practice. This understanding is consistent with Mochtar Kusumaatmadja's conception of law as an instrument of social

development, whereby the State is responsible not only for maintaining public order but also for consciously directing the law toward the achievement of the social justice envisioned by Pancasila (Gautama, 1983, p. 17; Kusumaatmadja, 1986, p. 12).

From this perspective, the obligations of the State under the Pancasila Rule of Law are not merely passive obligations requiring the State to refrain from violating the rights of its citizens. The State also bears an affirmative obligation to proactively create conditions and establish mechanisms that enable every citizen to effectively enjoy his or her rights, rather than recognizing those rights solely at a formal or textual level. Romli Atmasasmita emphasizes that a democratic state governed by the rule of law can exist only when three fundamental pillars are consistently upheld: governance based upon law, the protection of human rights, and public access to justice. Within the framework of the Pancasila Rule of Law, these three pillars must be infused with the values embodied in the five principles of Pancasila, namely Belief in the One Supreme God, Just and Civilized Humanity, the Unity of Indonesia, Democracy Guided by the Inner Wisdom of Deliberation Among Representatives, and Social Justice for All Indonesians (Atmasasmita, 2011, p. 45; Atmasasmita, 2012).

The constitutional foundation for these positive obligations is explicitly embedded within the body of the 1945 Constitution of the Republic of Indonesia. Article 27(1) provides that all citizens shall be equal before the law and the government, while Article 28D(1) guarantees every person the right to recognition, guarantees, protection, and legal certainty that are just, as well as equal treatment before the law. These constitutional provisions must not be understood merely as symbolic declarations. Jimly Asshiddiqie argues that the constitutional rights enshrined in the Constitution are legally binding and require their effective realization by all state institutions, including in the formulation of criminal procedural law, which directly governs the relationship of power between law enforcement authorities and citizens (Asshiddiqie, 2011, p. 127).

Scholarly analysis published in the *Jurisprudence: Jurnal Ilmu Hukum Universitas Jenderal Soedirman* further affirms that the principle of equality before the law requires the State to provide access to justice for every individual regardless of background, including within the criminal justice process. This principle demands not only formal equality before the law but also substantive equality in access to the legal protection mechanisms provided by the State for all parties involved in criminal proceedings. In other words, equality is not merely equality on paper but equality reflected in a genuine opportunity to defend one's legal interests. This understanding constitutes the constitutional benchmark for determining whether a provision of criminal procedural law satisfies constitutional standards or, conversely, fails to do so in judicial practice (Marzuki, 2024).

It is essential to recognize that whenever the State imposes a legal obligation upon its citizens, a corresponding constitutional obligation arises for the State to protect those individuals, and such an obligation cannot be diminished. Within criminal proceedings, witnesses possess not only rights but are also subject to significant legal obligations. They are required to appear when lawfully summoned, obliged to provide truthful testimony, and may be subjected to compulsory measures should they refuse to comply without lawful justification. These legal obligations place witnesses in a structurally vulnerable position vis-à-vis the coercive authority of the State. Accordingly, the principles of Just and Civilized Humanity and Social Justice embodied in the Pancasila Rule of Law jointly require the State not only to impose obligations upon witnesses but also to guarantee their rights in a proportionate manner (Mertokusumo, 2010, p. 43).

In *The Limits of the Criminal Sanction*, Herbert L. Packer classifies criminal justice systems into two principal models: the Crime Control Model and the Due Process Model. The Crime Control Model prioritizes the efficiency of crime detection and prosecution by treating the person under examination primarily as an object of the criminal process. In contrast, the

Due Process Model emphasizes the protection of individual procedural rights and recognizes individuals as subjects entitled to legal safeguards. From the perspective of the Pancasila Rule of Law, the normative model that most closely reflects the values of Pancasila is the Due Process Model because it is only within such a framework that a proper balance between the rights and obligations of all parties can be realized. The former KUHAP, which failed to recognize the right of witnesses to be accompanied by an advocate during examination, was in substance more closely aligned with the Crime Control Model, a paradigm that is inconsistent with the ideal character of the Pancasila Rule of Law (Packer, 1968, pp. 149–173; Hiariej, 2012, p. 102).

This theoretical construction leads to a fundamental proposition that serves as the benchmark for the subsequent analysis. Within the Pancasila Rule of Law, whenever the State places a citizen in a position that requires him or her to confront law enforcement authorities, the State simultaneously bears the constitutional obligation to provide adequate procedural safeguards. Such safeguards include the right to understand one's legal position, the right to be free from coercion, and the right to be accompanied by a legally competent representative. The failure to provide these safeguards is not merely a matter of legislative policy or political discretion; rather, it constitutes a denial of the State's constitutional obligations. From this premise, the present article will demonstrate that the normative vacuum under the former KUHAP qualifies as a fundamental and prolonged constitutional failure of the State (Asshiddiqie, 2011, p. 127).

The distinctive character of the Pancasila Rule of Law becomes even more apparent when compared with the Continental European concept of *Rechtsstaat* and the Anglo-Saxon concept of the *rule of law*. *Rechtsstaat* emphasizes formal legality, the separation of powers, and the protection of fundamental rights through administrative courts, whereas the *rule of law* is grounded in the supremacy of law, equality before the law, and constitutional guarantees enforced through judicial decisions. Muhammad Tahir Azhary argues that the Pancasila Rule of Law is not entirely identical to either tradition because it is fundamentally rooted in the values of Belief in the One Supreme God and the principle of kinship. Within this constitutional framework, the relationship between the State and its citizens is not conceived as a contest between individual liberty and governmental authority but rather as a relationship of protection and guidance, thereby requiring the State to play an active role in protecting individuals who occupy vulnerable positions within legal proceedings (Hadjon, 1987, pp. 82–84).

The doctrine of State obligations under international human rights law distinguishes three interrelated levels of responsibility: the obligation to respect, the obligation to protect, and the obligation to fulfil human rights. The obligation to respect requires the State to refrain from engaging in conduct that infringes upon individual rights. The obligation to protect requires the State to prevent third parties from violating those rights. Meanwhile, the obligation to fulfil requires the State to adopt legislative and administrative measures that enable rights to be effectively enjoyed in practice. In the context of a witness's right to legal representation by an advocate, these three layers of obligation are inseparably connected. The State is required not to obstruct the presence of legal counsel, to protect witnesses from coercion or intimidation by law enforcement authorities, and to fulfil this right through the enactment of appropriate legal norms and the provision of legal aid. It is the State's failure to discharge this obligation to fulfil that is most evident in the regulatory framework of the former KUHAP (Mertokusumo, 2010, p. 43).

The values embodied in Pancasila provide substantive content to these positive constitutional obligations. The Second Principle, Just and Civilized Humanity, requires that every individual who encounters the legal process be treated with dignity and humanity rather than merely as an object of investigation. The Fifth Principle, Social Justice for All the People of Indonesia, requires that access to legal protection should not become the privilege of certain

groups but must be equally available to all citizens, including indigent witnesses. Likewise, the Fourth Principle, Democracy Guided by the Inner Wisdom of Deliberation Among Representatives, presupposes a legal process that is deliberative and respectful of the voices and interests of every party involved. Consequently, when criminal procedural law fails to recognize the right of witnesses to legal representation, it effectively negates the substantive values embodied in these constitutional principles. The issue therefore transcends procedural law and becomes a constitutional question that strikes at the philosophical foundation of the Indonesian State itself (Gautama, 1983, p. 17; Kusumaatmadja, 1986, p. 12).

Sudikno Mertokusumo explains that procedural law serves to enforce substantive law through procedures that simultaneously guarantee legal certainty and justice. Accordingly, defects in procedural law inevitably affect the quality of justice ultimately produced by the legal system. From this perspective, the right to legal representation by an advocate is not merely an additional or supplementary entitlement but rather an essential component of the architecture of procedural justice designed to ensure equality between the parties involved in legal proceedings. When one party is subjected to examination without adequate legal understanding while the opposing party exercises comprehensive institutional authority, the balance that constitutes the very foundation of procedural justice inevitably collapses. The theoretical framework developed in this section therefore provides a clear constitutional benchmark for assessing whether a particular provision of criminal procedural law conforms to the standards of the Pancasila Rule of Law or instead deviates from those constitutional requirements (Mertokusumo, 2010, p. 43).

The Normative Vacuum of the Former Criminal Procedure Code (KUHAP) as a Constitutional Failure: An Analysis of *Das Sollen* versus *Das Sein*

Article 54 of Law Number 8 of 1981 on the Criminal Procedure Code (KUHAP) stipulates that, for the purposes of defense, a suspect or defendant is entitled to legal assistance from one or more legal counsel at every stage and level of examination. Grammatically, the provision explicitly refers only to suspects and defendants. Witnesses, despite bearing legal obligations that are no less significant, are not included within the scope of this provision. From the perspective of *das sollen* (what ought to be), this normative omission creates a fundamental gap between what is guaranteed by the Constitution and what is regulated by statutory law. The Constitution guarantees equality before the law for every individual, whereas the former KUHAP explicitly differentiated legal protection based on an individual's procedural status within the criminal process, without any constitutionally justifiable basis for such differentiation (Hamzah, 2016, p. 74).

This *das sollen* gap is not merely a minor legislative deficiency but strikes at the very core of procedural justice. By limiting legal protection solely to suspects and defendants, the former KUHAP established a hierarchy of legal protection that lacked constitutional justification. Witnesses who face the possibility of being reclassified as suspects are exposed to significant legal risks, yet they occupy the most vulnerable position because they are not guaranteed legal representation. In fact, the preliminary stage of examination is precisely where procedural errors most frequently occur and where such errors become the most difficult to remedy at later stages of the proceedings. Statements provided without adequate legal understanding may permanently determine an individual's legal position throughout subsequent criminal proceedings. For this reason, the normative vacuum at this procedural stage carries constitutional significance far exceeding that of a mere technical legislative omission (Law Number 8 of 1981 on the Criminal Procedure Code, art. 54).

Attempts were made to fill this normative gap through regulations subordinate to statutory law, but these efforts proved substantively inadequate. Regulation of the Chief of the Indonesian National Police Number 8 of 2009 concerning the Implementation of Human Rights

Principles and Standards in the Performance of Police Duties recognizes, in Article 27, the right of witnesses to be accompanied by legal counsel. Nevertheless, this regulation suffers from a fundamental structural weakness. It binds only investigators within the Indonesian National Police and has no binding force over investigators from other institutions, such as the Attorney General's Office, the Corruption Eradication Commission (KPK), or Civil Servant Investigators (PPNS). The Constitutional Court itself, through statements made by its Justices, acknowledged that this regulation lacked clarity and was inconsistently implemented in practice, rendering it incapable of remedying the legislative vacuum at the statutory level (Regulation of the Chief of the Indonesian National Police Number 8 of 2009, art. 27; Wahid, 2022).

The shortcomings of subordinate legislation reaffirm a fundamental principle of legal science: a legislative vacuum at the statutory level cannot be adequately remedied by regulations of a lower hierarchical status and narrower scope. The Police Regulation applies only internally and does not possess the same binding legal authority as rights expressly guaranteed by statute. Furthermore, because of its technical and administrative character, the regulation can easily be disregarded without giving rise to meaningful legal consequences. This situation demonstrates that the problem is not merely the absence of regulation per se, but rather the absence of statutory guarantees that are binding upon all investigative institutions and supported by enforceable legal consequences in cases of non-compliance. It is precisely this legislative deficiency at the statutory level that constitutes a constitutional defect (Regulation of the Chief of the Indonesian National Police Number 8 of 2009, art. 27; Wahid, 2022).

Nanang Suyuti, in research conducted at Sultan Agung Islamic University, found that, in practice, advocates attempting to accompany clients who were being examined as witnesses during the investigation stage were frequently refused by investigators on the grounds that the Criminal Procedure Code provided no legal basis for such assistance. This empirical finding clearly demonstrates how the normative deficiency at the level of *das sollen* is transformed directly into a practical failure at the level of *das sein* (what actually exists). Witnesses examined without legal assistance are potentially induced to provide statements that are incomplete, inaccurate, or even self-incriminating due to psychological pressure, inadequate legal knowledge, or undocumented forms of intimidation. Statements obtained under such circumstances are subsequently relied upon as the basis for further criminal proceedings without any assurance that they genuinely reflect the witness's free and voluntary will (Suyuti, 2024, pp. 78–82; Sholecha et al., 2023).

The failure at the level of *das sein* becomes even more profound when examined in light of the principle against self-incrimination. When a witness undergoes examination without the assistance of legal counsel capable of understanding the limits imposed by law, that witness can easily become trapped into answering incriminating questions without appreciating their legal consequences. Under such conditions, testimony that ought to function as an instrument for discovering the truth instead becomes a trap that ensnares the individual providing it. Practices of this nature are fundamentally incompatible with the ideal of an honest and fair judicial process. Consequently, the State's failure to provide legal assistance for witnesses is not merely a matter of failing to supply procedural facilities; rather, it constitutes a significant source of evidentiary distortion that undermines the search for material truth while simultaneously violating the dignity of those who provide testimony, a dignity that the State is constitutionally obliged to protect (Suyuti, 2024, pp. 78–82; Sholecha et al., 2023).

The Constitutional Court, in Decision Number 65/PUU-VIII/2010, made an important contribution by expanding the definition of a witness and emphasizing the necessity of balancing the rights of all parties involved in criminal proceedings. The decision implicitly acknowledged that a fair evidentiary system requires equal legal protection extending beyond suspects alone. However, the Court did not expressly mandate the enactment of statutory

provisions guaranteeing the right of witnesses to legal representation. Consequently, the constitutional gap remained unresolved. The subsequent constitutional review of Article 54 of the Criminal Procedure Code in Case Number 61/PUU-XX/2022 further confirmed that the Indonesian legal community had identified this omission as a serious constitutional problem that could not be resolved solely through judicial interpretation, but instead required explicit legislative correction (Constitutional Court of the Republic of Indonesia, 2011; Constitutional Court of the Republic of Indonesia, 2023).

Lawrence M. Friedman identifies three interdependent components of every legal system: legal structure, legal substance, and legal culture. The normative vacuum in the former KUHAP represents a failure at the level of legal substance, which subsequently spread into the other two components of the legal system. At the structural level, law enforcement officers lacked an adequate normative basis for treating witnesses equally with suspects concerning the right to legal assistance. At the cultural level, examining witnesses without legal counsel gradually became a routine practice regarded as normal, even by members of the public who remained unaware that their legal rights were in fact being denied. These systemic failures across all three dimensions demonstrate that the legislative omission was not merely a technical defect, but rather a structured constitutional failure affecting the criminal justice system as a whole (Friedman, 1975, pp. 11–16).

Gustav Radbruch argued that law is the bearer of the value of justice, and that a rule failing to satisfy the minimum standard of justice does not deserve to be regarded as law in its true sense. Applying Radbruch's framework, Article 54 of the former KUHAP, which granted legal assistance exclusively to suspects and defendants, contained a serious material defect because it failed to satisfy the requirements of procedural justice. Reinhold Zippelius further maintains that procedural justice depends upon equal opportunities for all parties to assert and defend their legal positions before the law. When witnesses are denied such equal opportunity because they are not accompanied by legal counsel, the procedural rules themselves fail to achieve their most fundamental objective, namely, ensuring a fair examination as a prerequisite for discovering the material truth (Radbruch, 1950, p. 107; Zippelius, 2011, p. 89).

The human rights dimension must also be incorporated into this analysis. Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR) through Law Number 12 of 2005. Article 14 of the Covenant guarantees the right to a fair trial, including the right to legal assistance. Although this provision expressly refers to persons charged with criminal offenses, the United Nations Human Rights Committee, in its General Comment No. 32, emphasizes that the underlying principle is universal: every individual involved in legal proceedings whose legal interests are exposed to potential risk is entitled to adequate procedural safeguards. Accordingly, the legislative omission in the former KUHAP was inconsistent not only with Indonesia's constitutional guarantees but also with its international human rights obligations (International Covenant on Civil and Political Rights, art. 14; United Nations Human Rights Committee, 2007, paras. 9–10).

The contrast between *das sollen* and *das sein* becomes even more apparent when viewed in light of Indonesia's fragmented investigative authority. Criminal investigations are not conducted exclusively by the Indonesian National Police, but may also be undertaken by the Attorney General's Office in certain cases, the Corruption Eradication Commission (KPK), and Civil Servant Investigators (PPNS) operating within various ministries and government agencies. When the right of witnesses to legal assistance depends solely upon the internal regulations of one investigative institution, witnesses examined by other agencies have no legal basis upon which to demand similar protection. This inconsistency results in unequal treatment of citizens solely because different institutions happen to conduct the investigation. Such a situation directly contradicts Article 27 paragraph (1) of the 1945 Constitution, which

guarantees equality of all citizens before the law and the government (Regulation of the Chief of the Indonesian National Police Number 8 of 2009, art. 27; Wahid, 2022).

Failures at the level of *das sein* also undermine the quality of evidence produced during criminal investigations. Eddy O.S. Hiariej argues that evidence obtained through procedurally defective processes has the potential to compromise the reliability of proof because material truth can only be achieved through procedures that guarantee the honesty and freedom of the person providing testimony. When witnesses provide statements while under pressure and without sufficient legal understanding, there exists a substantial risk that such testimony does not accurately reflect the actual facts. Yet these statements may subsequently serve as the basis for identifying suspects, drafting indictments, and even rendering criminal judgments. Consequently, the absence of legal assistance harms not only individual witnesses but also erodes the very foundation of truth-seeking that constitutes the primary objective of the criminal justice system (Packer, 1968, pp. 149–173; Hiariej, 2012, p. 102).

It must be emphasized that the constitutional failure discussed here was not an isolated or incidental occurrence but rather an institutionalized failure that persisted for more than four decades. Throughout this period, the State was fully aware of the legislative gap, observed repeated attempts to address it through ineffective subordinate regulations, and even faced constitutional challenges before the Constitutional Court. Nevertheless, it failed to undertake timely and adequate legislative reform. Moh. Mahfud MD explains that legal politics determines the direction in which law develops, and that the decision to preserve a legislative vacuum is itself a political choice carrying legal responsibility. This prolonged legislative inaction strengthens the conclusion that the omission constituted a structural and deliberate constitutional failure on the part of the State (Mahfud MD, 2017, pp. 22–24).

The most tangible consequence of this constitutional failure has been the erosion of public trust in Indonesia's criminal justice system. When the public observes that individuals may be subjected to hours of examination without legal assistance and that statements obtained during such examinations may later be used to incriminate them, a perception naturally develops that the criminal process prioritizes case resolution over justice for individuals. Such perceptions weaken the legitimacy of the legal system and discourage public cooperation with law enforcement authorities, ultimately making criminal investigations more difficult rather than more effective. The State's failure to fulfill its positive constitutional obligations therefore creates a vicious cycle in which injustice and public distrust reinforce one another. This analysis demonstrates that correcting the legislative omission is not merely a legal necessity but also an essential step toward restoring the legitimacy of the criminal justice system (Friedman, 1975, pp. 11–16).

It should further be emphasized that the normative vacuum in the former KUHAP concerned not only the absence of the right to legal representation, but also the lack of adequate guarantees that witnesses would be informed of their legal rights before being examined. Under the former Criminal Procedure Code, investigators were under no explicit legal obligation to explain a witness's legal position, the right to refuse to answer self-incriminating questions, or the possibility that the witness's procedural status could subsequently change. The absence of such a duty to inform further exacerbated the structural imbalance, as witnesses entered the examination room without a clear understanding of their legal rights or the potential legal consequences of their statements. Satjipto Rahardjo consistently argued that law must serve humanity rather than the reverse. Accordingly, procedural rules that allow citizens to undergo legal examination without understanding their own rights are fundamentally inconsistent with the humanistic spirit that law ought to embody. This deficiency further reinforces the constitutional dimension of the legislative omission under the former KUHAP (Rahardjo, 2009, p. 5; Rahardjo, 2007, p. 24).

Viewed from the perspective of legal politics (*politik hukum*), the State's decision to leave this legislative vacuum unaddressed for more than four decades reflects a legal policy orientation that prioritized the effectiveness of law enforcement over the protection of individual rights. Such an orientation is inconsistent with the direction of Indonesia's national legal development, which should be firmly grounded in the values of Pancasila and the ideals of a constitutional state. Romli Atmasasmita argues that legal reform cannot be considered meaningful unless the protection of human rights is placed at its very center. Consequently, the legislative omission concerning witnesses' rights should not merely be understood as a technical oversight by lawmakers, but rather as evidence of a legal policy that had not yet fully recognized citizens as legal subjects entitled to meaningful protection. Recognizing this broader context is essential to ensure that legislative reform extends beyond merely amending statutory provisions and instead transforms the fundamental orientation underlying the formulation of Indonesia's criminal procedural law (Atmasasmita, 2011, p. 45; Atmasasmita, 2012, p. 8).

Law Number 20 of 2025 as a Constitutional Correction: Normative Achievement and Implementation Challenges

The enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) on 18 November 2025 marked a historic milestone after more than four decades of normative deficiency in the protection of witnesses. Article 143 of the new Criminal Procedure Code comprehensively regulates witnesses' rights that had previously been unrecognized, including, among others, the right to choose, contact, and be accompanied by an advocate during every stage of examination; the right not to be subjected to legal prosecution for testimony given in good faith; the right to provide testimony free from coercion; the right to be free from leading or incriminating questions; the right to refuse to provide testimony that may incriminate oneself; and the right to be free from torture and intimidation (Law No. 20 of 2025, art. 143). These provisions constitute a historic normative recognition and fill the legal vacuum that had long been left unaddressed.

Beyond expanding the rights of witnesses, the new Criminal Procedure Code also fundamentally transforms the role of advocates during investigative proceedings. Research published in *Causa: Jurnal Hukum dan Kewarganegaraan* notes that under the former Criminal Procedure Code, advocates accompanying examinations were only permitted to play a passive role merely sitting, taking notes, and observing without the authority to object to the manner in which examinations were conducted (Saleh et al., 2025). The new Criminal Procedure Code fundamentally changes this paradigm. Article 32 grants advocates the right to raise objections whenever investigators pose intimidating or leading questions, while Article 150 expressly guarantees advocates the right to accompany suspects, defendants, witnesses, and victims at every stage of criminal proceedings (Law No. 20 of 2025, arts. 32 & 150). This expansion transforms legal assistance from merely symbolic attendance into active participation capable of influencing the quality and fairness of investigative examinations.

From the perspective of the Pancasila Rule of Law, the provisions of Article 143 of the new Criminal Procedure Code may be understood as fulfilling the State's positive constitutional obligation that had been neglected for more than four decades. The State has finally assumed its responsibility to balance the legal position of witnesses with that of suspects within the criminal justice process, as mandated by the principle of social justice embodied in Pancasila. These provisions are likewise consistent with the principle of equality among parties, which requires that no party be placed in a structurally weaker position when defending his or her legal interests. Within the framework of Satjipto Rahardjo's progressive law theory, the enactment of Article 143 reflects the understanding that law must continuously evolve in

response to the dynamics of society, for law exists not for its own sake but to uphold human dignity and the nobility of humanity (Rahardjo, 2007, p. 24).

Despite the significance of these normative reforms, this constitutional correction faces serious implementation challenges. The first challenge concerns the legal culture of law enforcement officials, who for decades have become accustomed to examining witnesses without the presence of advocates. Legislative reform formally changes the substance of the law, but it does not automatically transform the modes of thinking, institutional habits, and underlying assumptions that have become deeply embedded within law enforcement practice. Lawrence M. Friedman emphasizes that legal culture constitutes the component of the legal system that changes most slowly because it represents the accumulated values, attitudes, and practices formed through prolonged institutional socialization (Friedman, 1975, p. 14). Without systematic training and rigorous supervision, the new provisions of the Criminal Procedure Code risk becoming nothing more than law on paper.

The second challenge concerns the accessibility of legal aid for indigent witnesses. Contrary to the assumption that has long prevailed, the new Criminal Procedure Code has, in fact, addressed part of this gap. Article 154 expressly stipulates that legal aid shall be provided not only to suspects and defendants but also to complainants, reporting parties, witnesses, and victims who are financially incapable at every stage of criminal proceedings. Furthermore, the competent official is under a legal obligation to inform them of this right and to appoint an advocate where necessary (Law No. 20 of 2025, art. 154). This provision represents a significant legislative breakthrough because it connects the right to legal representation with a state-funded legal aid mechanism. Nevertheless, its effectiveness depends upon the readiness of Law Number 16 of 2011 on Legal Aid and its implementing regulations to expand the scope of legal aid beneficiaries so that indigent witnesses are genuinely covered (Law No. 16 of 2011, arts. 4 & 22).

A study published in the *Jurnal Sosial Teknologi* cautions that positioning legal aid as a right dependent upon the initiative of the beneficiary, without adequate institutional capacity and financial support, risks reducing the effectiveness of legal protection and rendering such rights merely formalistic (Azhar et al., 2026). This criticism is highly relevant because well-drafted legal norms are of little practical value when the supporting infrastructure is unavailable. The number of accredited legal aid organizations remains limited and unevenly distributed, particularly outside major urban centers. If the expansion of legal aid beneficiaries is not accompanied by increased institutional capacity and sustainable funding, indigent witnesses in remote regions will continue to experience serious difficulties in accessing advocates. Consequently, the rights guaranteed under Article 154 risk remaining little more than promises that are difficult to realize in everyday practice.

The third challenge concerns the urgent need for comprehensive implementing regulations accompanied by clear legal sanctions. Although the new Criminal Procedure Code has established a strong normative foundation, the technical procedures governing the provision of legal assistance to witnesses across all investigative institutions have yet to be comprehensively regulated. A Government Regulation, or at minimum implementing regulations issued by the relevant ministries and agencies, is required to establish detailed procedures concerning the notification of rights, the appointment of advocates for indigent witnesses, the mechanism through which advocates may formally object during the preparation of investigation reports, and the sanctions applicable when investigators disregard these rights. Without explicit sanctions, the obligation to notify witnesses of their rights as stipulated in Article 154 paragraph (2) risks becoming merely a declaratory norm lacking effective coercive force in practice (Mahfud MD, 2017, pp. 22–24).

The issue of sanctions deserves particular emphasis as perhaps the most critical weakness of the current reform. Law Number 20 of 2025 establishes witnesses' rights and imposes

corresponding obligations upon law enforcement officials, yet it does not clearly specify the legal consequences arising from violations of those obligations. Within criminal procedural law, the absence of procedural sanctions tends to deprive legal provisions of their practical binding force. If witness testimony obtained without prior notification of rights and without legal assistance continues to be regarded as valid and admissible evidence, investigators will have little incentive to comply with these procedural safeguards. Consequently, regulating the legal consequences of violations of witnesses' rights including the possibility of excluding evidence obtained through unlawful procedures should become an immediate legislative priority rather than a matter for future consideration (Law No. 20 of 2025, arts. 30 & 143).

A direct comparison between the former and the new Criminal Procedure Codes clearly illustrates the magnitude of the normative transformation that has taken place. Under the former Criminal Procedure Code, the only legal basis for legal assistance was Article 54, which was limited exclusively to suspects and defendants, leaving witnesses within a complete legal vacuum. By contrast, the new Criminal Procedure Code explicitly regulates witnesses' rights through a layered framework comprising Article 143, which establishes witnesses' rights; Article 150, which guarantees the presence of advocates throughout all stages of proceedings for suspects, defendants, witnesses, and victims; and Article 154, which provides legal aid for indigent witnesses (Law No. 20 of 2025, arts. 143, 150, & 154). This multi-layered structure demonstrates that the legislature did not merely amend a single provision but instead constructed an integrated framework of legal protection in which the various provisions reinforce one another. Accordingly, the reform constitutes a systemic constitutional correction rather than a piecemeal legislative amendment.

The transformation of the advocate's role from passive attendance to active participation constitutes one of the most significant breakthroughs introduced by the new legislation. Under the former Criminal Procedure Code, advocates accompanying their clients during examinations were frequently permitted only to observe the proceedings, without any authority to interrupt or challenge intimidating or leading questions. Article 32 of the new Criminal Procedure Code fundamentally changes this situation by granting advocates the right to object whenever investigators pose intimidating or misleading questions, while Article 150 guarantees the presence of advocates throughout every stage of criminal proceedings (Law No. 20 of 2025, arts. 32 & 150). A study published in *Causa: Jurnal Hukum dan Kewarganegaraan* characterizes this reform as a substantial strengthening of the advocate's supervisory function over investigative examinations (Saleh et al., 2025). By empowering advocates to raise formal objections, the law enables them to prevent violations of procedural rights at the earliest possible stage, thereby ensuring that legal assistance functions as a genuine procedural safeguard rather than a mere symbolic formality.

Research published in the *Jurnal Sosial Teknologi* further emphasizes that the legal aid framework established under the 2025 Criminal Procedure Code carries profound implications for Indonesia's entire criminal justice system because it requires every investigative institution to adjust its operational procedures in accordance with the new legal standards (Azhar et al., 2026). Such institutional transformation requires adequate financial resources, qualified human resources, and effective inter-agency coordination elements that have not yet been sufficiently developed. Without such institutional preparedness, there is a substantial risk that the rights guaranteed by the new legislation will be effectively implemented only in high-profile cases attracting significant public attention, while witnesses involved in ordinary criminal cases will continue to undergo examinations without legal representation. Such disparities in implementation would recreate precisely the inequality that the legislation seeks to eliminate. Accordingly, consistent monitoring and evaluation constitute indispensable prerequisites for ensuring that this constitutional correction retains its substantive significance.

The role of advocate organizations and legal aid organizations is therefore crucial in ensuring the effective implementation of these new legal norms. Law Number 16 of 2011 on Legal Aid regulates the provision of free legal assistance through accredited legal aid organizations. Nevertheless, the availability and geographical distribution of such organizations remain uneven throughout Indonesia. In order for Article 154 of the new Criminal Procedure Code to operate effectively, close cooperation among the Government, advocate organizations, and universities that maintain legal aid institutions is essential, accompanied by sustainable financial support. Expanding the category of legal aid beneficiaries to include indigent witnesses must likewise be accompanied by enhanced institutional capacity, specialized training for advocates, and referral mechanisms that are both efficient and easily accessible. Without strengthening the broader legal aid ecosystem, the normative guarantees established by the new Criminal Procedure Code risk failing to reach those individuals most in need of legal protection (Law No. 20 of 2025, art. 154; Law No. 16 of 2011, arts. 4 & 22).

From the perspective of legal system theory, the successful implementation of Law Number 20 of 2025 requires simultaneous transformation of the three interrelated components of the legal system: legal substance, legal structure, and legal culture. The substantive dimension has been significantly improved through the enactment of clear statutory provisions. However, the structural dimension comprising investigative institutions and legal aid providers still requires substantial institutional adjustment, while the legal culture of law enforcement officials demands continuous professional development and institutional reform. Bernard Arief Sidharta argues that meaningful legal development requires harmony among legal norms, institutional arrangements, and the legal consciousness of those responsible for implementing the law (Sidharta, 2009, p. 181). Consequently, the constitutional correction introduced by the new legislation should be understood as an ongoing process rather than a completed achievement. Its ultimate success depends upon further measures, including comprehensive implementing regulations, institutional strengthening, and the transformation of legal culture toward a genuine rights-based paradigm of legal protection.

Overall, Law Number 20 of 2025 undeniably constitutes a genuine constitutional correction to the State's previous failure to fulfill its constitutional obligations. Nevertheless, this correction remains incomplete. From the perspective of progressive legal theory, the true success of these new legal norms should not be measured merely by their inclusion within statutory text, but rather by the extent to which they become embedded in the conduct of law enforcement officials and are genuinely experienced by those witnesses who are most vulnerable. The State has fulfilled the first stage of its positive constitutional obligation by establishing the necessary legal norms. However, that obligation will remain unfulfilled unless those norms are supported by a legal culture that respects rights, adequate and sustainable funding, and effective enforcement mechanisms accompanied by meaningful sanctions. These three prerequisites will ultimately determine whether this constitutional correction achieves substantive constitutional significance or remains merely symbolic (Rahardjo, 2007, p. 30).

To ensure that this constitutional correction extends beyond the text of the legislation, a concrete and measurable reform agenda is required. First, the Government should promptly issue implementing regulations governing the procedures for notifying witnesses of their rights, appointing advocates for indigent witnesses, and regulating the mechanism through which advocates may formally object during the preparation of official investigation reports. Second, the legal consequences arising from violations of witnesses' rights should be explicitly established, including the possibility of excluding evidence obtained through unlawful procedures. Third, the institutional capacity of legal aid organizations should be strengthened and expanded so that legal assistance becomes accessible throughout Indonesia, including remote regions. Fourth, the legal culture of law enforcement officials should be transformed

through continuous education and professional training. Collectively, these measures would bridge the gap between legal norms and legal practice, ensuring that the protections guaranteed by law are genuinely experienced by the witnesses who are most vulnerable within Indonesia's criminal justice system (Law No. 20 of 2025, arts. 30 & 143).

CONCLUSION

This article demonstrates that the absence of a legal norm guaranteeing the right of witnesses to legal assistance from an advocate under the former Criminal Procedure Code (KUHP) constituted a constitutional failure of the State to fulfill its positive obligations as a Pancasila Rule of Law State. For more than four decades, the State imposed substantial legal obligations upon witnesses without providing proportional procedural protection, thereby contradicting the principle of social justice embodied in Pancasila, Article 28D of the 1945 Constitution of the Republic of Indonesia, and the fundamental principles of procedural justice. Law Number 20 of 2025 concerning the Criminal Procedure Code represents a significant constitutional correction through the enactment of Articles 143, 150, and 154. Nevertheless, the effectiveness of these reforms depends upon the transformation of the legal culture of law enforcement officials, the expansion of access to free legal aid for indigent witnesses, and the establishment of implementing regulations accompanied by clear and enforceable sanctions.

From a theoretical perspective, this article contributes to the development of the concept of the State's positive obligations within the framework of the Pancasila Rule of Law, a subject that has thus far received limited attention in the literature on Indonesian constitutional law and criminal procedure. This approach offers an analytical framework that is distinct from the classical liberal model by asserting that, within the Pancasila Rule of Law, the balance between rights and obligations is not merely an ethical principle but a constitutional norm that may serve as a benchmark for assessing the validity of criminal procedural legislation. These findings are relevant not only for evaluating the Criminal Procedure Code but also for assessing other legislation that imposes legal obligations upon citizens without guaranteeing equivalent legal protection, as well as for advancing a more operational theory of the Pancasila Rule of Law.

REFERENCE

Journal

- Andriawan, W. (2022). Pancasila perspective on the development of legal philosophy: Relation of justice and progressive law. *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, 5(1), 1–11. <https://doi.org/10.24090/volksgeist.v5i1.6361>
- Atmasasmita, R. (2012). Reformasi hukum, hak asasi manusia dan penegakan hukum. *Jurnal Hukum dan Peradilan*, 1(1), 1–18.
- Azhar, D., dkk. (2026). Konstruksi hak bantuan hukum dalam KUHP 2025 dan implikasinya terhadap sistem peradilan pidana. *Jurnal Sosial Teknologi*, 6(2), 565–575. <https://doi.org/10.59188/jurnalsostech.v6i2.32709>
- Fauzi, R. M. F. (2023). Bantuan hukum terhadap saksi dalam proses peradilan pidana di Indonesia. *Hasanuddin Law Review*, 9(3), 259–270. <https://doi.org/10.20956/halrev.v9i3.4123>
- Jurisprudence. (2024). The rule of law and the principle of equality before the law in Indonesia. *Jurisprudence: Jurnal Ilmu Hukum Universitas Jenderal Soedirman*, 10(1), 1–20. <https://doi.org/10.20884/1.jih.2024.10.1.495>
- Kurniawan, Z., Wahyudi, I., & Tisnanta, H. S. (2020). The right non self-incrimination and epistemology of criminal witnesses. *Fiat Justisia: Jurnal Ilmu Hukum*, 14(4), 363–380. <https://doi.org/10.25041/fiatjustisia.v14no4.1988>

- Saleh, M. R., dkk. (2025). Reformasi peran advokat dalam KUHAP baru. *Causa: Jurnal Hukum dan Kewarganegaraan*, 3(5), 1–12.
<https://cibinstitute.id/index.php/causa/article/view/2570>
- Sholecha, E. M., dkk. (2023). Justice collaborator's position and function on witness protection's rights as a suspect from the perspective of criminal law in Indonesia. *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, 6(1), 83–96.
<https://doi.org/10.24090/volksgeist.v6i1.7246>
- Wahid, A. (2022). The urgency of whistleblowers legal protection in the criminal justice system. *Fiat Justisia: Jurnal Ilmu Hukum*, 16(4), 353–370.
<https://doi.org/10.25041/fiatjustisia.v16no4.2660>

Thesis

- Suyuti, N. (2024). *Perlindungan hukum pendampingan saksi oleh advokat pada tahap penyidikan* (Tesis, Universitas Islam Sultan Agung Semarang).

Book

- Asshiddiqie, J. (2011). *Konstitusi dan konstitusionalisme Indonesia*. Sinar Grafika.
- Atmasasmita, R. (2011). *Sistem peradilan pidana kontemporer*. Kencana.
- Azhary, M. T. (2010). *Negara hukum: Suatu studi tentang prinsip-prinsipnya dilihat dari segi hukum Islam, implementasinya pada periode Negara Madinah dan masa kini*. Kencana.
- Friedman, L. M. (1975). *The legal system: A social science perspective*. Russell Sage Foundation.
- Gautama, S. (1983). *Pengertian tentang negara hukum*. Alumni.
- Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. Bina Ilmu.
- Hadjon, P. M., & Djatmiati, T. S. (2005). *Argumentasi hukum*. Gadjah Mada University Press.
- Hamzah, A. (2016). *Hukum acara pidana Indonesia* (Edisi ke-2). Sinar Grafika.
- Harahap, M. Y. (2016). *Pembahasan permasalahan dan penerapan KUHAP: Penyidikan dan penuntutan* (Edisi ke-2). Sinar Grafika.
- Hiariej, E. O. S. (2012). *Teori dan hukum pembuktian*. Erlangga.
- Kusumaatmadja, M. (1986). *Fungsi dan perkembangan hukum dalam pembangunan nasional*. Binacipta.
- Mahtud MD, M. (2017). *Politik hukum di Indonesia*. RajaGrafindo Persada.
- Marzuki, P. M. (2016). *Penelitian hukum* (Edisi revisi). Kencana.
- Mertokusumo, S. (2010). *Mengenal hukum: Suatu pengantar*. Cahaya Atma Pustaka.
- Packer, H. L. (1968). *The limits of the criminal sanction*. Stanford University Press.
- Pangaribuan, L. M. P. (2012). *Hukum acara pidana: Satu kompilasi ketentuan-ketentuan KUHAP dan hukum internasional yang relevan*. Djambatan.
- Radbruch, G. (1950). Legal philosophy. Dalam *The legal philosophies of Lask, Radbruch, and Dabin* (K. Wilk, Trans.). Harvard University Press.
- Rahardjo, S. (2007). *Membedah hukum progresif*. Kompas.
- Rahardjo, S. (2009). *Hukum progresif: Sebuah sintesa hukum Indonesia*. Genta Publishing.
- Sidharta, B. A. (2009). *Refleksi tentang struktur ilmu hukum*. Mandar Maju.
- Surono, A. (2024). *Filsafat ilmu hukum*. Universitas Pancasila Press.
- Zippelius, R. (2011). *Rechtsphilosophie*. C.H. Beck.

Legislation and Court Decisions

- Indonesia. (1945). *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.
- Indonesia. (1981). *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*.
- Indonesia. (2005). *Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights*.

- Indonesia. (2006). *Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban*.
- Indonesia. (2011). *Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum*.
- Indonesia. (2014). *Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban*.
- Indonesia. (2025). *Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana*.
- Kepolisian Negara Republik Indonesia. (2009). *Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2009 tentang Implementasi Prinsip dan Standar Hak Asasi Manusia dalam Penyelenggaraan Tugas Kepolisian Negara Republik Indonesia*.
- Mahkamah Konstitusi Republik Indonesia. (2011). *Putusan Mahkamah Konstitusi Nomor 65/PUU-VIII/2010*.
- Mahkamah Konstitusi Republik Indonesia. (2023). *Putusan Mahkamah Konstitusi Nomor 61/PUU-XX/2022*.
- United Nations Human Rights Committee. (2007). *General Comment No. 32: Article 14, Right to Equality before Courts and Tribunals and to a Fair Trial (CCPR/C/GC/32)*.