



## The Presumption of Innocentness in the Perspective of Human Rights (Case Study of Persecution of Tempo Journalist Nurhadi)

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### Abstract

The press is all mass communication media that transmit thoughts in written and spoken words made by journalists/journalists. Article 8 of Law no. 40 of 1999 concerning the Press and the Journalistic Code of Ethics for Indonesian journalists states that press freedom is guaranteed as a human right of citizens. Journalists in carrying out their profession are recorded in the law. That in carrying out their profession, journalists get legal protection. However, in reality, violence by investigators against journalists still occurred in May 2021, when journalists were interrogated with physical violence by investigators.

In contrast, positive Indonesian law states that the presumption of innocence has been formulated in several other laws and regulations. This principle can serve as a guide for carrying out investigations by reasonable procedures. This issue is about the principle of presumption of innocence in Indonesia and how the presumption of innocence from a human rights perspective is in the case of persecution of journalist Nurhadi by the Police. The research method used is a normative juridical research method to obtain results regarding the Regulation of the presumption of innocence in detail in Indonesia and an understanding of the principle of the presumption of innocence as an embodiment of human rights that protect the overall dignity and worth that must uphold.

**Keywords:** Principles of Presumption of Guilt, Human Rights, Law

### Abstrak

Pers adalah semua media mass communications yang memancarkan pikiran baik dengan kata-kata tertulis maupun dengan kata-kata lisan yang dibuat oleh wartawan/jurnalistik. Pasal 8 Undang-Undang No. 40 Tahun 1999 tentang Pers dan Kode Etik Jurnalistik wartawan Indonesia, mengatakan bahwa kemerdekaan pers dijamin sebagai hak asasi warga negara. Wartawan dalam menjalankan profesi yaitu tercatat di undang-undang bahwa dalam melaksanakan profesinya wartawan mendapatkan perlindungan hukum. Namun kenyataannya kekerasan oleh penyidik kepada wartawan masih terjadi pada Mei 2021 saat wartawan di introgasi dengan kekerasan fisik oleh penyidik. Padahal hukum positif Indonesia menyatakan bahwa asas praduga tidak bersalah (presumption of innocence) telah dirumuskan dalam beberapa undang-undang dan peraturan lainnya, dimana asas tersebut dapat menjadi tuntunan untuk menjalankan penyidikan sesuai dengan prosedur yang baik. Sesuai dengan hal tersebut, maka timbulah sebuah masalah mengenai bagaimana pengaturan asas praduga tidak bersalah di Indonesia, dan bagaimana asas praduga tidak bersalah dalam perspektif hak asasi manusia pada kasus penganiayaan wartawan Nurhadi oleh oknum kepolisian. Metode penelitian yang digunakan adalah metode penelitian yuridis normatif untuk memperoleh hasil mengenai pengaturan asas praduga tidak bersalah secara rinci di Indonesia dan pemahaman asas praduga tak bersalah merupakan perwujudan hak asasi manusia yang memberikan perlindungan terhadap keseluruhan harkat dan martabat yang wajib dijunjung tinggi.

**Kata Kunci :** Asas Praduga Tidak Bersalah, Hak Asasi Manusia, Undang-Undang.

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## I. Introduction

In a narrow sense, the press broadcasts thoughts, ideas, or news employing the written word in a narrow sense. On the other hand, in a broad sense, the press includes all mass communication media that transmit one's thoughts and feelings both in written and spoken words. In the era of press reform and the position of the press is very strong. At that time, the Government was careful in responding to press reports and criticism regarding the Military Operations Area in Ambon. So strong is the influence and position of the press in the reform

era that the position of the Indonesian press has become the first pillar of democracy. Symptoms of press freedom in Indonesia that also to a survey by the Reporters Without Border organization in Paris in 2002, press freedom in Indonesia is the best in Southeast Asia.<sup>1</sup>

However, recently the issue of press freedom/freedom in Indonesia is whether it is by the constitution and laws relating to the function and role of the press in democratic life. Very important to formulate: Given the experience, almost every political system calls itself democratic and guarantees press freedom, but in practice, it is authoritarian and shackles the press.<sup>2</sup> The legal protection for journalists in carrying out their profession is recorded in the law, which explicitly states that journalists get legal protection.<sup>3</sup>

Law number 40 of 1999 concerning the Press and the Code of Ethics for Indonesian Journalists, particularly Article 8 of Law no. 40 of 1999, states that press freedom is guaranteed as a citizen's human right. The national press shall not be subject to censorship, ban, or ban on broadcasting. The national press has the right to seek, obtain and disseminate ideas and information.

The guarantee of legal protection for the media and journalists is mandated by the Press Law of 1999 Article 8 "In carrying out their profession, journalists receive legal protection." However, on a practical level, it is still impossible to guarantee that the media and journalists are free from acts of violence in carrying out their work. The pattern of violence that often appears can be rebuking, seizing cameras, occupying media offices, beatings to murder.<sup>4</sup>

Many acts of violence against journalists and media are considered standard because the stigma of media freedom has gone too far, even though this is not the case. In their work process, the media must still pay attention to the journalistic code of ethics. Before publicly published information, a mechanism must cover both sides and checks and balances as a professional journalistic standard. The news becomes balanced and does not harm either party through this process.<sup>5</sup>

In May 2021, the Directorate of General Criminal Investigation (Dit Reskrimum) of the East Java Police was reported to have named two suspects related to the alleged abuse case against Tempo journalist Nurhadi. Both members of the Police with the initials P and F. Nurhadi were accused of trespassing into the wedding reception of Angin Prayitno's children at the Graha Samudera Bumimoro Building complex of the Surabaya Navy Education and Training Doctrine Development Command Headquarters (Kodiklatal). Nurhadi was then led to a warehouse behind the building for interrogation. Even though they have conveyed their status as journalists, some guards allegedly did not pay attention. Nurhadi was repeatedly subjected to physical violence during the interrogation process. The next day, Nurhadi officially reported his case to the East Java Police, accompanied by AJI Surabaya, KontraS, LBH Lentera, LBH Pers, and LBH Surabaya. East Java Police Chief Inspector General Nico Afinta has formed a special team to uncover the case.<sup>6</sup> Indicates that the principle of presumption of innocence does not work. The media has blocked the suspect's right to be declared innocent until the Court issues a final verdict.

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<sup>1</sup> Satrio Saptohadi, "Pasang Surut Kebebasan Pers di Indonesia." *Jurnal Dinamika Hukum* 11, No. 1. (2011): 135.

<sup>2</sup> *Ibid.*, 132

<sup>3</sup> *Ibid.*

<sup>4</sup> Pretty Bella Wajong, "Perlindungan Hukum Bagi Wartawan Dalam Melaksanakan Tugas Dan Fungsi Terkait Dengan Kebebasan Pers Menurut Undang-Undang Nomor 40 Tahun 1999," *Jurnal Lex Et Societatis* 6, No. 2 (2018):59.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Dua Oknum Polisi Jadi Tersangka Kasus Penganiayaan Jurnalis Tempo*, quoted from the page: <https://www.suara.com/news/2021/05/09/132848/dua-oknum-polisi-jadi-tersangka-kasus-penganiayaan-jurnalis-tempo> ; (accessed on 06 June 2021)

Human Rights as the suspect was not respected and even protected for this incident. In this case, the alleged perpetrator of a crime should have the right to be free from pressure such as being intimidated, intimidated and physically tortured, and sexually harassed.<sup>7</sup> Human rights are fundamental rights inherent in humans and are universal and lasting. Therefore they must be protected, respected, maintained, and should not be ignored, reduced, or taken away by Anyone. Indonesia is a state of law, where all actions of the administration of the state and citizens must comply with the applicable legal rules.<sup>8</sup>

Positive Law states that the principle of presumption of innocence has been formulated in Article 8 of the Basic Law on Judicial Powers No. 14 of 1970 in conjunction with the Law of Republic of Indonesia No. 35 of 1999 concerning Amendments of Law no. 14 of 1970. State Gazette of the Republic of Indonesia of 1999 Number 14 concerning the main provisions of judicial power.<sup>9</sup> Criminal Procedure Law, the principle of the presumption of innocence is not explicitly stated but is only contained in the general exclamation point 3 c of the Criminal Procedure Code. Thus, Article 18 paragraph (1) of the Republic of Indonesia Law no. 39 of 1999 and Chapter III Decree of the Minister of Justice of the Republic of Indonesia No. M01 PW. 07. 03 of 1982 Guidelines for the Implementation of the Criminal Procedure Code.<sup>10</sup> This principle can guide investigations by reasonable procedures; as explained in the background above, the writer is interested in conducting a research entitled "Principles of Presumption of Guilt in the Perspective of Human Rights (Case Study) Persecution Against Journalist Tempo Nurhadi."

## II. Research Problems

1. How to regulate the principle of presumption of innocence in Indonesia?
2. How is the principle of presumption of innocence in the perspective of human rights the persecution of journalists at the time of the Police?

## III. Research Methods

The type of research taken in this study is normative. Normative legal research aims to assess the quality of legal norms, so normative legal research is often classified as qualitative research.<sup>11</sup> Normative juridical research examines legal principles, legal systematics, legal synchronization, legal history, and legal comparisons.<sup>12</sup> In this study, the author emphasizes library research.<sup>13</sup> The approach method used by the author is to determine the solicitation approach and the case approach. This research is a descriptive-analytical study because, in this study, the author tries to explain and analyze the principle of the presumption of innocence from the perspective of human rights. The descriptive method is a problem-solving procedure that is investigated by describing the current state of the research object based on

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7. Uli Parulian Sihombing, dkk, "*Hak Tersangka di Dalam KUHAP*" (Jakarta, 2011).

8. Bobi Aswandi, Kholis Roisah. "Negara Hukum dan Demokrasi Pancasila dalam Kaitannya dengan Hak Asasi Manusia (HAM)," *Jurnal Pembangunan Hukum Indonesia* 1, No. 1 (2019) : 132.

9. Nur Hasan, "Keberadaan Asas Praduga Tak Bersalah di Proses Peradilan Pidana," *Jurnal Ilmiah Universitas Batanghari Jambi* 17, No. 3. (2017) : 206.

10. Heri Tahir, "*Proses Hukum yang Adil dalam Sistem Peradilan Pidana di Indonesia*" (Surabaya, 2002), 99.

11. Meray Hendrik Mezak, "Jenis, Metode dan Pendekatan Dalam Penelitian Hukum," *Law Review Fakultas Hukum Universitas Pelita Harapan* 5, No.3, (2000): 86.

12. Zainudin Ali, *Metode Penelitian Hukum* (Jakarta, 2010), 30.

13. Muhamad Iqbal, "Implementasi Efektifitas Asas Oportunitas di Indonesia Dengan Landasan Kepentingan Umum," *Jurnal Surya Kencana Satu* 9, No.1, (2018):87.

the facts that appear or as they are. The data analyzed is secondary data, which is obtained through library research. The data analysis of this research is a normative qualitative method, namely the method of analysis carried out with a normative/doctrinal approach. Data presentation is carried out simultaneously with data analysis based on the theoretical framework and understanding developed when interpreting the data.

#### **IV. Research Results And Discussion**

##### **1. Regulation of the Presumption of Guilt in Indonesia**

Principles are part of human life. In every principle, man sees an ideal he wants to achieve. The principle of law is an idea that does not describe reality in contrast to the law, a prescriptive life guide on how humans should behave to protect their interests. The principle of presumption of innocence is an aspiration or hope that everyone suspected, arrested, detained, prosecuted, or brought before a court is considered innocent before a court decision declares his guilt and has obtained permanent legal force. The law is not always applicable. In general, legal principles are abstract. Therefore they are not always stated in concrete legal regulations.<sup>14</sup>

The function of the principle of law in the legal system is to ratify and have a normative and binding influence on parties because existence is based on the formulation of legislators and judges. Likewise, the presumption of innocence principle has a normative influence and binds all interested parties in the case process. Besides normative and binding functions, legal principles also complement the legal system and make the legal system flexible. The principle of presumption of innocence as a general legal principle of procedure applies in every litigation process in Court, namely with the word "before the court." Can apply the principle of presumption of innocence in all existing forms of justice. However, because the principle of presumption of innocence is rewritten in General Elucidation Point 3c of the Criminal Procedure Code as a criminal procedure law in Court, the principle of innocence is better known in criminal cases.<sup>15</sup>

The principle of presumption of innocence is not explicitly explained in the Criminal Procedure Code.<sup>16</sup> In the General Elucidation, it was emphasized that: The principles governing the protection of human beings' overall dignity and worth have been laid down in the law on the Basic Provisions of Judicial Power, namely Law Number 14 of 1970 must be enforced in this law. One of these principles is that every person suspected, detained, prosecuted, and before him before a court must be considered innocent until a court decision declares his guilt and obtains permanent legal force.<sup>17</sup>

The investigation process in the Criminal Procedure Code only regulates general matters, including an investigator's authority as regulated in Article 7 letter e, which states that an investigator can examine a case suspected of being a criminal offense. Regarding examinations carried out by investigators, Article 112 of the Criminal Procedure Code authorizes investigators to be able to summon suspects as well as witnesses deemed necessary for the examination. Furthermore, Article 117 of the Criminal Procedure Code states that testimony of a suspect or witness to an investigator is given without pressure from Anyone. However, what actions an investigator can take during the examination process is not regulated in detail in the Criminal Procedure Code and the method of the investigator's

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<sup>14</sup> Muhammad Schinggyt Tryan P, dkk, "Tinjauan Yuridis Terhadap Pelaksanaan Asas Praduga Tak Bersalah Dalam Proses Peradilan Pidana," *Diponegoro Law Journal* 5, No. 4 (2006): 4.

<sup>15</sup> *Ibid.*,

<sup>16</sup> I Nyoman Gede Remaja, "Penerapan Asas Praduga Tak Bersalah Bagian Dari Perlindungan Hak Asasi Manusia Yang Harus Dijamin Oleh Negara," *Jurnal Hukum* 6, No. 1 (2018): 14.

<sup>17</sup> Nur Hasan, *Op. Cit.*, 207.

examination. The powers granted to the Police, such as the Criminal Procedure Code and the Law on the Police, do not mention the authority to reconstruct criminal cases in the investigation process. Criminal Procedure Code and the Police Law only regulate the powers of investigators in general and in outline. However, the Regulation of the National Police Chief Number 6 of 2019 concerning Criminal Investigations clearly and firmly regulates what can do a thing to carry out the investigation stages. And precisely, the Regulation of examination techniques in investigations regarding reconstruction techniques is contained in the Decree of the Chief of Police No. Pol: Skep/1205/IX/2000 regarding the Revision of the Juklak and Technical Guidelines for the Investigation of Criminal Acts.<sup>18</sup>

Indonesia's positive law states that the principle of presumption of innocence has been formulated in Article 8 of Basic Law on Judicial Powers No. 14 of 1970 in conjunction with the Law of the Republic of Indonesia No. 35 of 1999 concerning Amendments to Law no. 14 of 1970. The State Gazette of the Republic of Indonesia of 1999 Number 14 concerning the Basic Provisions of Judicial Power affirms that "Every person who is suspected, arrested, detained, prosecuted, and brought before the Court, must be presumed innocent before a court decision declares him guilty."<sup>19</sup> No one can judge/assume that a convicted criminal has been guilty before the Court finds him guilty. Here the position of the Police should only be to secure it. In conducting an investigation, they can only ask a few questions without resorting to violence or threats.

Law Number 48 of 2009 concerning Judicial Powers; Article 8 paragraph (1) states that "Everyone who is suspected, arrested, prosecuted, and brought before a court must be presumed innocent before a court decision declares his guilt and has obtained permanent legal force ." Explaining Article 8 of the Basic Law on Judicial Powers No. 14 of 1970 in conjunction with the Law of the Republic of Indonesia No. 35 of 1999 concerning Amendments to Law no. 14 of 1970. the State Gazette of the Republic of Indonesia of 1999 Number 14 concerning the main provisions of the judicial power above.

Some accounts suggest that the presumption of innocence is an accurate word or a presumption based empirically on the probability that the accused is factually innocent.<sup>20</sup> Article 18 paragraph (1) of the Republic of Indonesia Law no. 39 of 1999 states that "everyone who is arrested, detained, and charged with allegedly doing something, is presumed innocent until his guilt is legally proven in Court and given all the legal guarantees necessary for defense, by Regulation. In addition, the principle of presumption of innocence is also regulated in Chapter III Decree of the Minister of Justice of the Republic of Indonesia No. M01 PW. 07. 03 of 1982 Guidelines for the Implementation of the Criminal Procedure Code. Manifestation of the principle of presumption of innocence cannot burden a defendant with the obligation of proof.<sup>21</sup>

Although it does not explicitly state the same thing, the principle is stated in Article 66 of Law no. 8 of 1981 concerning the Criminal Procedure Code, which states, "Suspects or defendants are not burdened with the obligation of proof ."Meanwhile, in the article's explanation, the provisions in Article 66 of the Criminal Procedure Code embody the presumption of innocence. <sup>i</sup>

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18. Ayu Agustina dan Slamet Riyadi, "Penggunaan Rekonstruksi Oleh Penyidik Kepolisian Kaitannya Dengan Penerapan Asas Praduga Tak Bersalah Dalam Kitab Undang-Undang Hukum Acara Pidana (KUHAP) (Studi Putusan No: 2390/Pid.B/2017/Pn.Jkt.Brt)," *Jurnal Ilmu Hukum* 3, No. 2, (2020) : 216-217.

19. Ayu Agustina dan Slamet Riyadi, "Penggunaan Rekonstruksi Oleh Penyidik Kepolisian Kaitannya Dengan Penerapan Asas Praduga Tak Bersalah Dalam Kitab Undang-Undang Hukum Acara Pidana (KUHAP) (Studi Putusan No: 2390/Pid.B/2017/Pn.Jkt.Brt)," *Jurnal Ilmu Hukum* 3, No. 2, (2020) : 216-217.

20. Pamela R. Ferguson, "The Presumption of Innocence and Its Role in The Criminal Process," *Criminal Law Forum*, (2016): 137.

21. Heri Tahir, *Op. Cit.*, 99-100.

22. Bagir Manan, dkk, "Asas Praduga Tidak Bersalah dalam Praktek Pers," *Jurnal Dewan Pers*, No. 2 (2010): 2.

23. *Ibid*, 3

In the world of the press, in order not to be judged by the mass media, previously paragraph (7) of the PWI journalistic code of ethics stated: Reports on examination of criminal cases in court trials must be imbued with the principle of presumption of innocence, namely new suspects. He is guilty of committing a crime if he has been proven guilty in a court decision with permanent force.

Recognition of the principle of presumption of innocence in the criminal procedure law applicable in our country has two purposes. First, to provide protection and guarantees for a human being accused of committing a criminal act in examining a case so that his human rights will not be raped. Second, to provide guidelines for officers to limit their actions in examining because the person being examined is a human being who has the same dignity and worth as the one conducting the examination.<sup>22</sup>

### 1. The Presumption of Guilt in the Perspective of Human Rights

Indonesia, as a state of the law as regulated in Article 1 paragraph (3) of the 1945 Constitution (UUD 1945), that Indonesia is a state of law. According to Sudargo Gautama, a state based on law must guarantee the equality of every individual, including the freedom of individuals to exercise their human rights. The Condition since Sequenom, considering that the rule of law was born due to individual struggles to free themselves from the ties and arbitrary actions of the authorities. The ruler must not act arbitrarily against individuals, and his power must be limited.

In fact, in May 2021, the Directorate of General Criminal Investigation (Dit Reskrimum) of the East Java Police was reported to have named two suspects related to the alleged abuse case against the journalist Tempo Nurhadi. Both are members of the National Police with the initials P and F. The Advocacy Coordinator stated this for Anti-Violence Journalists against Journalists, Fatkhul Choir. Nurhadi was accused of trespassing into the wedding reception of Angin Prayitno's child at the Graha Samudera Bumimoro Building, the Surabaya Navy Education and Training Doctrine Development Command Headquarters complex (Kodiklatal). Nurhadi was then led to a warehouse behind the building for interrogation. Even though they have conveyed their status as journalists, some guards allegedly did not pay attention. Nurhadi was repeatedly subjected to physical violence during the interrogation process. The next day, Nurhadi officially reported his case to the East Java Police, accompanied by AJI Surabaya, KontraS, LBH Lentera, LBH Pers, and LBH Surabaya. East Java Police Chief Inspector General Nico Afinta has formed a special team to uncover the case.<sup>23</sup>

The case above shows that the police officers ignore the suspect's rights. They resort to violence to get information/confessions from the journalist. In contrast, the investigation must pay attention to reasonable procedures and apply the principle of presumption of innocence. The principle of presumption of innocence is an integral part of the due process of law. The principle of presumption of innocence is the embodiment of the protection of human rights because the application of the principle of presumption of innocence in criminal cases is related to the unequal position between the suspect and the legal apparatus concerned, so it's feared that arbitrary actions from law enforcement will occur.<sup>24</sup>

Applying the principle of presumption of innocence to a suspect or defender does not mean a suspect. Defenders have the same rights as people who have not committed a crime. Still, each suspect or defender is presumed innocent and thus has the opportunity to exercise their right to defend themselves at a higher level. Any examination until there is a final and

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24. Tiya Erniyati, "Extrajudicial Killing Terhadap Terduga Pelaku Tindak Pidana Terorisme Dalam Perspektif Asas Praduga Tak Bersalah," *Badamai Law Journal* 3, Issues 1, (2018): 100.

25. Dua Oknum Polisi Jadi Tersangka Kasus Penganiayaan Jurnalis Tempo, quoted from the page: <https://www.suara.com/news/2021/05/09/132848/dua-oknum-polisi-jadi-tersangka-kasus-penganiayaan-jurnalis-tempo> ; accessed on 06 Juni 2021.

26. Ni Putu Noni Suharyanti, "Perspektif Ham Mengenai Penerapan Asas Praduga Tidak Bersalah Dalam Kaitannya Dengan Pemberitaan Di Media Massa," *Jurnal Advokasi* 5, No.2. (2015) : 127.

27. *Ibid*, 129.

binding decision stating the guilt. There is a close relationship between human rights and criminal law, where human rights require criminal law to criminalize human rights violations. In contrast, criminal law in its implementation must be guided by human rights principles so that arbitrariness does not occur.

Based on the explanation above, the principle of presumption of innocence is the embodiment of human rights that protect the fundamental dignity and worth that must uphold. In this case, the Regulation of a principle of presumption of innocence as a manifestation of human rights is necessary to uphold and protect them by the principles of a democratic rule of law. The provisions in Article 281 paragraph (5) of the fourth amendment to the 1945 Constitution, i.e., Uphold and protect human rights with the principle of the Rule of Law. The implementation of human rights is guaranteed, regulated, and set forth in laws and regulations.<sup>25</sup>

According to Article 1 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, human rights are defined as: a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, Government and everyone for the sake of honor and protection of human dignity.

Different perspectives among law enforcers differ in the view of Human Rights (Human Rights), recently sticking out with the "policy" of the prosecutor's office, which has to prosecute criminals or file legal remedies if the Court's decision states that the defendant is free or long term. Imprisonment is not 2/3 of the demands of the public prosecutor.<sup>26</sup> In short, a person's perspective is influenced by his knowledge (knowledge) and broad understanding (comprehensive) as well as actual practices in the field (applicative). Then with analysis, synthesis, and evaluation, someone prepares something according to that person's perspective.<sup>27</sup>

Different given Human Rights, which is inevitable. In Human Rights, there are two essential principles behind the concept of Human Rights itself, namely the principles of freedom and equality, where these two things are the basis of the existence of justice. John Rawls argues that three things are solutions to the main problem of justice, namely.

- a. The principle of equal freedom for all includes the freedom to participate in political life, freedom of speech, freedom of the press, freedom of religion, freedom to be oneself, freedom from arbitrary arrest and detention, and the right to defend private property.
- b. The difference principle. The essence of this principle is that must socioeconomic differences must be regulated to provide significant benefits to those who are less advantaged.
- c. The principle of fair equality of opportunity, the essence of this principle is that socioeconomic inequalities must regulate in such a way as to open up positions and social status for all people in conditions of equal opportunity.

Based on the principles above, the three principles are the main things that exist in Human Rights; Human Rights do not look at a person's economic, social and cultural position and do not see how his position as a civilian or private person. In terms of political position, everyone has the freedom and the same position. However, this does not apply to the obscenity case committed by the journalist investigator Nurhadi when he was integrated.<sup>28</sup>

Although its implementation varies from one country to another, The Universal Declaration of Human Rights is a reference for studying human rights. Article 11 states the right of every person to be presumed innocent until it is proven that he is guilty according to the law in an open court where he has the right to his defense.

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<sup>28</sup>. M. Zen Abdullah, "Asas Praduga Tak Bersalah Dari Berbagai Perspektif," *Jurnal Lex Specialis*, No. 14, (2011).

<sup>29</sup>. *Ibid*,

<sup>30</sup>. *Ibid*,

<sup>31</sup>. Meilanny Budiarti Santoso, "Lgbt Dalam Perspektif Hak Asasi Manusia," *Social Work Jurnal* 6, No. 2 (2016): 226.

The article above explicitly stipulates the existence of an open trial and the guarantee of the defendant's right to his defense, concluding that the presumption of innocence is the basis of the right given to everyone to defend in a court that is open to the public. In other words, every person is recognized as having the right to defend the allegations against him. To provide harmony between the allegations and one's rights, the principle of the presumption of innocence is a fundamental factor in that right. Therefore, the presumption of innocence principle is essential before the Court and from the start. A suspect must bear it so that from the beginning, everyone must uphold the right of the suspect to defend himself. In this case, it does not mean that a suspect has the same rights as a person who has not committed a crime, but that every suspect is considered innocent so that he has the opportunity to use his right to defend himself at any level.<sup>29</sup>

It is not uncommon for print and online media to report about violence perpetrated by police officers during an investigation, even though it is not sure that the suspect is guilty but has been written guilty. In comparison, an investigator has the authority to conduct investigations with certain limits, while journalists or news writers also have their code of ethics in reporting something.

In Article 1, point 1 of the Criminal Procedure Code, "Investigators are certain police officers or civil servants who are given special authority by law to carry out investigations.". Article 1 of evidence is explained in general provisions 1 point 2 of the Criminal Procedure Code, namely, "Investigation is the action of an investigator in terms of and according to this law to seek and collect what evidence makes about a criminal act that occurred and to find the suspect."

The authority of investigators from State Police officials is regulated in Article 7 Paragraph (1) of the Criminal Procedure Code. As referred to in Article 6 paragraph (1) letter, because of their obligation to have the authority to receive reports or complaints from someone regarding a criminal act, take other actions according to the law, and are responsible.

Police investigators should be independent without any pressure from any party, including superiors/leaders, then pay attention to the police professional code of ethics so that investigators can carry out their duties as professional, clean and independent law enforcers.<sup>30</sup> Police investigators, in carrying out investigative duties related to the criminal justice process, always uphold the professional ethics of the Police as regulated in the Police Professional Code of Ethics and the Police Investigator Professional Code of Ethics as regulated in Police Regulation No. 15 of 2006 concerning the Police. Investigator Professional Code of Ethics. Article 2 of the Regulation of the National Police Chief Number: 15 of 2006 concerning the Code of Ethics for the Professional Police of the Police Investigator reads, "That I, to be appointed as a Police investigator, will always be loyal, obedient and obedient to Pancasila, the 1945 Constitution of the Republic of Indonesia and the Unitary State of the Republic of Indonesia." Where the 1945 Constitution regulates Human Rights (HAM), also in article 27, "Every citizen has the right to work and a decent living on welfare."

Apart from investigators, journalists are also prone to denying a suspect's rights to the news he uploads. Both print and online journalism have ethics. According to the Online Journalism Review issued by the Annenberg School of Journalism, University of Southern California, online journalism ethics is ultimately no different from traditional journalism ethics. There are some essential qualities that online journalism should demonstrate—first, anti-plagiarism. Second, immediacy: journalists need to convey how they got the information and what influenced them to publish it. Third, do not accept gifts or money for coverage. Fourth, be honest. Journalists must be honest with readers and open about their work.<sup>31</sup>

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<sup>32.</sup> JD Pers, "Asas Praduga Tidak Bersalah dalam Praktek Pers", *Jurnal Dewan Pers* 1, No. 2 (2010): 4-5.

<sup>33.</sup> Dani Durahman, "Penerapan Sanksi Terhadap Penyimpangan Penyidik Polri Dalam Menangani Perkara," *Jurnal Ilmiah Universitas Batanghari Jambi* 16, No.2 (2016): 51.

<sup>34.</sup> *Ibid.*,



As long as journalists carry out their duties according to procedures, they will protect their rights. Article 50 of the Criminal Code (KUHP) states that: "Anyone who commits an act to carry out the legislation should not be punished. This proves that journalists are also given the authority or carry out the provisions of the legislation". As long as these provisions are not violated, they cannot be punished when journalists fight for justice and truth while reporting. Journalists also carry out statutory provisions, and therefore, journalists cannot punish. The guarantee of press freedom is explained in Article 4 paragraph (1), i.e., "Freedom of the press is guaranteed as a human right of citizens." What is meant by freedom is free from preventive actions, prohibitions, and or oppression, so that the public's right to obtain information is guaranteed. Freedom of the press is freedom accompanied by an awareness of the importance of upholding the rule of law carried out by the courts and professional responsibilities described in the Journalistic Code of Ethics and the conscience of the press.<sup>32</sup>

Article 4 of Law Number 40 of 1999, paragraph (3) explains that the national press has the right to seek, obtain, and disseminate ideas and information to guarantee press freedom. In this case, what is done by the perpetrators of violence by preventing journalists from getting pictures or news is a form of violation of Article 4 paragraph (3), especially with the acts of violence committed by the apparatus against journalists? The apparatus should take firm action against the members involved in this case because it is by the law. In the criminal provisions of Law Number 40 of 1999 in Article 18 paragraph (1) which reads: "Anyone who unlawfully intentionally commits an act that results in obstructing or hindering the implementation of the provisions of Article 4 paragraph (2) and paragraph (3) shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of Rp. 500,000,000.00 (Five hundred million rupiahs)."

The investigator in the above case does not have the authority to commit violence or position the suspect as an object because this makes the suspect limited to defending and unable to do so. Then as a journalist, a lot of the news uploaded is not by the journalistic code of ethics, including not hiding the victim's identity and so on. the uploaded news is actual. It makes people who read it indoctrinated that the uploaded news is actual. There is already the identity of the suspect and other information. So this causes the suspect to have no right to defend himself. The principle of the presumption of innocence is fundamental to play a role where the definition and function of the principle extensively protect suspects and upholds human rights as suspects.

## V. Conclusions

The principle of presumption of innocence is an aspiration or hope that everyone suspected, arrested, detained, prosecuted, or brought before a court is considered innocent before a court decision declares his guilt and has obtained permanent legal force. Indonesian positive law states that the principle of presumption of innocence has been formulated in Article 8 of the Basic Law on Judicial Powers Number 14 of 1970 in conjunction with the Law of the Republic of Indonesia Number 35 of 1999 concerning Amendments to Law no. 14 of 1970. State Gazette of the Republic of Indonesia of 1999 Number 14 concerning the Basic Provisions of Judicial Power, Law Number 48 of 2009 concerning Judicial Power, Article 18 paragraph (1) of the Law of the Republic of Indonesia No. 14 of 1970. 39 of 1999, also regulated in CHAPTER III Decree of the Minister of Justice of Indonesia No. M01 PW. 07. 03 of 1982 Guidelines for the Implementation of the Criminal Procedure Code, Article 66 of Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), which affirms, "Suspects or defendants are not burdened with the obligation of proof." Meanwhile, the article's explanation states that the provisions in Article 66 of the Criminal Procedure Code embody the principle of presumption of innocence.

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<sup>35</sup>. Endre Vandy Katiandagho," Perlindungan Hukum Terhadap Profesi Wartawan Menurut Pasal 8 UU No. 40 Tahun 1999 Tentang Pers," *Lex Crimen* 7, No. 6 (2018): 84.

The principle of presumption of innocence in the perspective of Human Rights is fundamental. The principle of presumption of innocence embodies human rights that protect the fundamental dignity and worth that must uphold. This principle gives the suspect the right to use his rights as a defense for himself and avoid violence by investigators and the media reporting it. However, this was not applied to the case of abuse by unscrupulous investigators to journalist Nurhadi when he was interrogated.

## VI. Suggestions

The principle of presumption of innocence must emphasize more to all law enforcers, especially to the Police as the first law enforcer, both through literature and socialization. Hence, there is an understanding of the importance of the principle of presumption of innocence.

There must be awareness among members of the National Police to carry out a professional code of ethics that each member carries out to realize the maintenance of security and public order.

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