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## Protection and Limitation of Human Rights in Criminal Law

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### Abstrak

Saat ini menjadi hal yang penting dalam menjaga keseimbangan antara perlindungan hak asasi manusia dan penegakan hukum pidana. Hak asasi manusia merupakan hak-hak dasar yang melekat pada setiap individu dan dilindungi oleh hukum. Di sisi lain, hukum pidana bertujuan untuk menjaga ketertiban sosial, mencegah tindakan kriminal, dan menghukum pelanggar hukum. Penelitian ini bertujuan untuk menganalisis dan mengkaji perlindungan serta batasan yang diterapkan dalam konteks hak asasi manusia dalam hukum pidana. Penelitian ini bersifat kualitatif. Teknik yang digunakan untuk memperoleh informasi melibatkan pengamatan yang cermat dan pencatatan yang teliti, diikuti dengan prosedur analisis seperti reduksi data, visualisasi, dan kesimpulan. Perlindungan dan batasan hak asasi manusia dalam hukum pidana sangat penting untuk menjaga keseimbangan antara kebebasan individu dan kepentingan masyarakat. Prinsip-prinsip seperti legalitas, kesetaraan, larangan perlakuan yang kejam, dan prinsip non-retroaktif, serta mekanisme seperti pengadilan yang independen, habeas corpus, dan perlindungan hak tersangka dan terdakwa, berperan penting dalam melindungi hak asasi manusia dalam hukum pidana. Batasan juga diterapkan untuk menjaga keamanan publik, kepentingan umum, dan melindungi hak-hak orang lain.

Kata Kunci: *Perlindungan, Batasan, HAM, Hukum, Pidana.*

## Abstract

Currently, it is important to maintain a balance between the protection of human rights and the enforcement of criminal law. Human rights are basic rights inherent to every individual and are protected by law. On the other hand, criminal law aims to maintain social order, prevent criminal acts, and punish lawbreakers. This research aims to analyse and examine the protection and limitations applied in the context of human rights in criminal law. This research is qualitative in nature. The techniques used to obtain information involve careful observation and meticulous recording, followed by analytical procedures such as data reduction, visualisation, and conclusion. The protection and limitation of human rights in criminal law is essential to maintain a balance between individual freedom and the interests of society. Principles such as legality, equality, prohibition of cruel treatment, and the principle of non-retroactivity, as well as mechanisms such as independent courts, habeas corpus, and protection of the rights of suspects and defendants, play an important role in protecting human rights in criminal law. Limitations are also applied to maintain public safety, public interest, and protect the rights of others.

Keyword: *Protection, Limitation, Human Rights, Criminal Law.*

## INTRODUCTION

The research presented in this study is grounded in the significance of preserving equilibrium between safeguarding human rights and implementing criminal law. Human rights are fundamental entitlements that are intrinsic to each person and are safeguarded by legal provisions (ARIFIN 2017). Conversely, the objective of criminal law is to uphold societal stability, deter criminal behaviour, and impose penalties on individuals who violate the law (Maculan & Gil Gil, 2020).

In practical terms, there exists a possibility of conflict between the safeguarding of human rights and the enforcement of criminal law (Wesche, 2022) and (Watkin, 2012). Several concerns that emerge pertain to the utilisation of disproportionate force by law enforcement personnel, the apprehension of individuals without proper legal procedures, bias in the criminal justice system, and the abuse of criminal legislation to curtail personal liberties.

The objective of this study is to examine and evaluate the safeguards and constraints implemented within the framework of criminal law with regard to human rights. The proposed study will encompass a thorough examination of both global and domestic legal frameworks pertaining to human rights and criminal justice, alongside an evaluation of current operational methodologies within this domain.

The objective of this study is to identify potential human rights violations in the criminal law context and propose solutions or recommendations to enhance the criminal law system's ability to ensure equitable and impartial safeguarding of human rights. The findings of this study may serve as a foundation for modifying policies, enhancing legal procedures, or formulating more effective regulations aimed at protecting human rights within the framework of law enforcement in criminal justice.

## RESEARCH METHOD

This research utilises a desk-based (qualitative) research methodology, which involves the absence of primary data collection through direct field research by the researchers. To ensure the efficient conduct of the research, the researcher used various reference materials for consultation. The relevant sources used for this research were obtained from digital media and scholarly databases through keyword-based searches relating to the themes outlined in the document. These themes include the protection and limitation of human rights in criminal law. The research method used by the author appears to be adaptive, which paves the way for the selection of relevant reference materials and does not require the author to limit the search to a particular journal or digital platform. As a result, the authors were able to save time. Our justification is supported by a number of different sources, some of which are journal websites such as ResearchGate, Elsevier, and Emerald Insight. The main focus of this paper is the protection and limitation of Human Rights in criminal law. The author's use of keyword emphasis aims to provide discourse boundaries and support logical consistency. This is achieved through the use of limiting phrases. The main focus of this research is on scholarly journals, essays, and publications that have been published from 2012 to the present. During the search process, we used specific keywords to conduct searches across different publishing platforms. It should be noted that the papers, journals, and publications included in this research are only those that are considered highly relevant to the topic of the protection and limitation of human rights in criminal law. Other papers, journals and publications were not included as they were deemed unrelated to the subject matter. This scholarly article includes a total of 20 different sources that discuss in depth.

The ongoing inquiry has been classified as a form of qualitative research. The data collection process encompassed various methodologies, including active listening and comprehensive record-keeping of all relevant data points. The aforementioned

methodologies were employed to facilitate the examination of the data, which was conducted through a process that encompassed data reduction, data presentation, and conclusion drawing. The main aim of this investigation was to gain a deeper understanding of the literature review conducted as a part of this research undertaking. In the stage commonly referred to as "data reduction," the acquired data was systematically arranged, classified, and refined to streamline the procedure of arriving at significant inferences and render the generation of noteworthy outcomes more feasible. Due to the intricate and diverse nature of the data, it was necessary to perform an analysis of them even during the reduction phase. The reduction phase aimed to determine the relevance of the information to the ultimate goal. Initially, a total of 38 distinct sources were gathered. The initial procedure led to the alteration of the numerical variable's value to 20. Furthermore, the information will be presented through visual aids in the form of graphs or charts. The present phase represents the subsequent stride in the data reduction procedure, wherein the dataset is methodically arranged in a structured format to enhance understanding and streamline the process of making inferences. The representation of data in this particular setting involves the utilization of written discourse, particularly in the form of field notes. The implementation of this methodology for data presentation has the potential to enhance efficiency in the categorization and structuring of data in relational configurations. The conclusive stage of the process involves the derivation of inferences from the gathered data, thereby rendering the process complete. The aforementioned step signifies the conclusion of the methodology utilized for the examination of qualitative data. In this phase, a thorough examination was conducted to verify that the results of data reduction and presentation aligned with the research's intended objectives. The aim of this phase is to extract significance from the acquired data through the identification of associations, resemblances, or disparities, with the purpose of developing remedies for previously recognized issues. The reliability of the results obtained from the utilized sources is considered to be high. The aim of this endeavor is to gather reliable and precise information, with the objective of augmenting understanding as a consequence.

## RESULTS AND DISCUSSION

The safeguarding and restriction of human rights within the realm of criminal law is of paramount significance in upholding the equilibrium between personal liberty and societal welfare (Pinto, 2018). Human rights are fundamental entitlements that are inherent to all

individuals by virtue of their humanity (Abakare, 2021). The aforementioned rights encompass civil, political, economic, social, and cultural domains and are deemed imperative to be upheld, safeguarded, and conferred to all persons without any form of prejudice. In the realm of criminal law, safeguarding and constraining human rights is imperative to guarantee that the execution of criminal law does not transgress or nullify these rights. Numerous principles and mechanisms are utilised in criminal law to safeguard the fundamental rights of individuals:

1. **Principle of Legality:** The principle of legality states that a person can only be punished if his or her conduct constitutes a clear offence and is prohibited by a pre-existing law (Westen, 2007). This means that there is no punishment without a law. This principle protects human rights by ensuring that individuals cannot be punished arbitrarily or without a clear legal basis.
2. **Principle of Equality Before the Law:** This principle guarantees that every individual has the same right to be presumed innocent and has equal rights in legal proceedings. There is no discrimination based on race, religion, gender or any other factor in the application of criminal law. This principle protects human rights by ensuring that all individuals have equal protection under the law.
3. **Prohibition of Cruel, Inhuman, and Degrading Treatment:** Criminal law prohibits cruel, inhuman or degrading treatment of individuals who are detained or convicted (Greer, 2015). This includes prohibitions against torture, inhumane treatment in custody, or punishment disproportionate to the offence committed. This principle protects human rights by ensuring that individuals are not treated in a way that violates their rights.
4. **Non-retroactive principle:** This principle states that criminal laws cannot be applied retroactively to aggravate punishment. This means that a person can only be punished for an act that constitutes an offence at the time the act was committed. This principle protects human rights by preventing the application of unfair or arbitrary punishment to acts that were not previously prohibited.
5. **Principle of Proportionality:** The principle of proportionality demands that the punishment meted out should be proportionate to the crime committed (Hirsch, 1992). Excessively severe or disproportionate punishment may amount to a violation of human rights. This principle protects human rights by ensuring that individuals are not punished excessively or unfairly.
6. **Presumption of Innocence:** This principle states that every individual is presumed

innocent until proven legally and convincingly guilty by a court of competent jurisdiction (Baradaran, 2011). This means that individuals have the right to self-defence, due process, and corroboration before being convicted. This principle protects human rights by preventing abuse of power and punishment without sufficient evidence.

The protection of human rights within the framework of criminal law is subject to certain limitations aimed at preserving the welfare of society and preventing any potential misuse of these rights. Several constraints are commonly imposed, such as:

1. **Public Safety:** Individual human rights may be restricted if such measures are necessary to maintain public safety and order (Bayer, 2007). For example, temporary detention to prevent crimes or acts of terrorism that jeopardise public security.
2. **Public Interest:** Individual human rights may also be restricted if the measure is necessary to protect the larger public interest, such as public health, public morality, or the economic interests of the country.
3. **Protection of the Rights of Others:** An individual's human rights may be restricted if the action is necessary to protect the rights of others or prevent unreasonable harm to others.

Nevertheless, it is imperative that these constraints adhere to the tenets of global human rights legislation. It is imperative that the application of measures is carried out with due consideration to proportionality and necessity, while ensuring that the fundamental essence of the human rights being safeguarded is not compromised. The safeguarding and restriction of human rights within the context of criminal law is crucial for upholding a state of equilibrium between personal liberty and societal welfare. The observance of fundamental principles such as legality, equality, prohibition of cruel treatment, and non-retroactivity serves to safeguard against any potential violation of human rights in the enforcement of criminal law. Nonetheless, it is possible to impose restrictions as required to uphold the welfare of the general public, safeguard the common good, or ensure the protection of the entitlements of others. Achieving a suitable equilibrium between safeguarding human rights and upholding societal concerns is a crucial aspect in the realm of criminal law (van Noorloos, 2021).

In the context of elucidating the safeguarding and constraining of human rights within the domain of criminal law, multiple mechanisms are employed to uphold this equilibrium:

1. **Independent Courts:** The importance of independent and fair courts is undeniable in protecting human rights in criminal law (Simarmata, 2010) and (Dewi, 2014).

Independent courts have a central role in ensuring that the rights of individuals are respected and protected. They must be free from political pressure or interference, and must base their decisions on the facts and the law.

2. Habeas Corpus: The principle of habeas corpus ensures that a person in detention has the right to be brought promptly before a court and not be detained arbitrarily or without lawful cause (Marpaung & Moeliono, 2021). It protects individuals from unjust or unlawful detention.
3. Respect for Privacy and Personal Liberty: The right to privacy and personal liberty must also be respected in the context of criminal law (Kusnadi, 2021) and (Kusumoningtyas & Puspitasari, 2020). Acts of wiretapping, unauthorised searches, or collection of personal information that violate an individual's privacy must be limited and subject to strict standards.
4. Prohibition of Torture: Criminal law expressly prohibits torture and cruel, inhuman, or degrading treatment of individuals in custody or under sentence (Patra, 2018). States have an obligation to protect individuals from torture and ensure that human rights are respected in all circumstances.
5. Proportionate Use of Force by Law Enforcement: Law enforcement must use proportionate force and action in dealing with crime and enforcing the law (Muchlis, 2016). Excessive use of force or disproportionate action may violate the human rights of individuals.
6. Protection of the Rights of Suspects and Accused: Rights that protect suspects and accused persons include the right to legal assistance, the right to be informed of the charges against them, the right to self-defence, the right not to testify against oneself, and the right to due process (Deliani, 2010). These mechanisms are important to ensure that accused persons have adequate protection and that their rights are respected throughout the legal process.
7. Elimination of Discrimination: Criminal law should be applied without discrimination. Every individual should be treated fairly and equally before the law, regardless of race, religion, gender, sexual orientation or any other factor. The elimination of discrimination is a fundamental principle in protecting human rights in criminal law (Khairunnisa, 2018).

In the context of the protection and limitation of human rights in criminal law, it should also be recognised that effective law enforcement and crime prevention are important factors in maintaining the security and welfare of society. However, these efforts must be

carried out with due regard and ensure that human rights remain protected. Some steps that can be taken to achieve this balance include:

1. **Education and Training:** Adequate education and training for law enforcement officials and legal professionals is essential in ensuring proper understanding of human rights and its principles. This can help avoid abuse of power, promote justice, and ensure proper protection of individual rights.
2. **Oversight and Accountability:** Effective oversight mechanisms over law enforcement, such as independent oversight bodies, ombudsmen, or human rights commissions, can ensure that law enforcement actions are conducted fairly and in accordance with the law. Accountability for human rights violations should be guaranteed and perpetrators of violations should face fair trials.
3. **Legal Reform:** Legal reform involving the improvement of criminal laws and their implementing regulations can help ensure that human rights are respected and properly protected. Law reform should be based on human rights principles and take into account developments in international law.
4. **International co-operation:** Co-operation between countries in protecting and promoting human rights in criminal law is also important. Countries can exchange information, experiences and best practices in order to improve the protection of human rights in the context of criminal law.
5. **Community Participation:** Involving civil society and human rights advocacy groups in the formulation of criminal law policies and judicial processes can ensure that diverse perspectives are taken into account and maintain the quality of the policies and legal decisions that result.

The endeavour to strike a balance between the state's interest in law enforcement and the protection of individual rights is an ongoing pursuit in criminal law with regards to safeguarding and restricting human rights. Enhancing comprehension of human rights principles, reinforcing autonomous law enforcement entities, and advancing transparency and accountability are crucial measures in guaranteeing that criminal law safeguards human rights in accordance with societal welfare.

## CONCLUSION

Safeguarding and restricting human rights within the framework of criminal law is imperative to uphold a harmonious equilibrium between personal liberty and societal welfare. The safeguarding of human rights in criminal law is contingent upon a number of fundamental principles, including but not limited to legality, equality, the proscription of inhumane treatment, and the principle of non-retroactivity. Additionally, the implementation of certain mechanisms, such as independent courts, the writ of habeas corpus, and the protection of the rights of suspects and defendants, serves as a crucial means of upholding these principles. Restrictions are imposed to ensure the protection of public safety, the promotion of public welfare, and the preservation of the rights of individuals. Nonetheless, it is imperative that these constraints adhere to the fundamental principles of human rights, exhibit a reasonable balance, and refrain from compromising the core of the human rights that are being safeguarded.

Given the aforementioned, this research will propose a number of significant recommendations, which include: Initially, enhanced education and training. Enhancing education and training programmes for law enforcement personnel and legal practitioners in the area of human rights is a crucial undertaking. This measure is expected to facilitate a comprehensive comprehension of the fundamental principles of human rights, thereby mitigating the likelihood of power abuse and fostering equitable dispensation of justice. Secondly, enhancing the mechanisms of oversight. To ensure that law enforcement actions are conducted in accordance with the law and with fairness, it is imperative to have effective oversight mechanisms in place. These mechanisms may include independent oversight bodies, ombudsmen, or human rights commissions. Ensuring accountability for human rights violations is imperative, and it is essential that those responsible for such violations are subjected to a just and impartial legal process. Thirdly, the implementation of legal reform based on human rights principles. The primary objective of legal reform should be to enhance criminal laws and their corresponding regulatory frameworks, with the aim of aligning them with the fundamental principles of human rights. The proposed reforms ought to encompass a comprehensive comprehension of global legal advancements and prioritise the safeguarding of human rights.

Fourthly, it is advisable to promote international collaboration. It is imperative for nations to engage in collaborative efforts towards safeguarding and advancing human rights within the realm of criminal justice. The sharing of information, experiences, and

optimal methods has the potential to enhance the comprehension and safeguarding of human rights on a global scale. Ultimately, it is imperative to enhance the involvement of the community. The engagement of civil society and human rights advocacy organisations in policy development and judicial proceedings can enhance the calibre of legal judgements and guarantee the inclusion of a wide range of viewpoints. The effective realisation of the protection and limitation of human rights in criminal law is expected to be achieved through the implementation of these recommendations. This will ensure a balance between the state's interest in law enforcement and the safeguarding of individual rights.

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