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The Role of Legal Advisors in Criminal Case Settlement Process

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Abstract

Since the enactment of Law No. 8 of 1981, LN. No. 76 of 1981, namely regarding the Criminal Procedure Code which came into force on December 31, 1981, the provisions contained in the HIR (Het Herzine Inlandsch Reglement) Staatsblad 1941 44 and all its implementing regulations are no longer valid. The values of Pancasila and the 1945 Constitution which are noble and uphold the existence of human rights also recognize the position and role of defenders which are implemented or further embodied in the Criminal Procedure Code, namely Law No. 8. The position and role of the defender are closely related to the rights of the suspect or defendant because the defender or legal advisor is present in the process of settling criminal cases precisely to assist and defend the rights of the suspect or defendant as regulated in the Criminal Procedure Code (KUHAP). A suspect who is suspected of committing a criminal act is not necessarily a guilty person, nor is a defendant charged with a criminal act not necessarily guilty because in our legal state recognizes the principle of "the presumption of innocence", so the suspect or defendant must be considered innocent. guilty before there is a judge's decision that already has permanent legal force. The presence of a defender in the settlement of a criminal case in addition to accompanying a suspect or defendant and defending him is also due to moral and juridical responsibility as one part of law enforcement officers who work together same as other law enforcers trying to find the material truth. In this criminal justice process, the provisions of Article 54 of the Criminal Procedure Code emphasize the rights of the suspect be accompanied by the defense or legal counsel at every level of examination, in other words, that the suspect or defendant has the right to have contact with the defender from the time of the preliminary examination until the time of the preliminary examination in court.

Keywords

legal advisor; criminal case settlement; role



I. Introduction

Defender or legal advisor in carrying out his duties in addition to defending the interests of the suspect or defendant, he should also fight for everything that benefits the suspect or defendant and on the other hand, the defender is also expected to provide an objective assessment in defending the interests of the suspect or defendant. This is because, in addition to defending the personal interests of the suspect or defendant, he must also defend the public interest as well as investigators, prosecutors, and judges, in the sense that the defender in carrying out his duties is in the legal interest relevant to the suspect or defendant. After all, the truth sought in the process of criminal proceedings is material truths, meaning that the criminal proceedings are looking for the real perpetrators of the real crimes.

In terms of the defense's duty in the public interest, Van Bemmelen argues: Defenders and public prosecutors in their defense must be objective like other people,

including judges, a defender should not view the defendant's condition as a subjective situation, of course, he (defender) must consider the interests of the community (Mulyatno, 2004).

According to the provisions of Law No. 14 of 1970 concerning the main points of judicial power, the work of the defense has a very broad meaning, namely: "Both the work is carried out inside the trial and the work is carried out outside the court" (Martiman, 2002).

In connection with the work of the defense as described above, especially concerning the work of the defense in court proceedings, it is necessary for the author to state the stages of examination in the administration of criminal cases.

The stages of examination in the settlement of criminal cases according to the provisions of the law (Provisions on the main points of the Criminal Procedure Code) consist of:

- a. Investigation stage
- b. Prosecution stage
- c. Court examination
- d. Execution stage

II. Research Methods

The method of obtaining data to obtain complete, correct and accurate data is through library research and field research.

2.1 Library Research

This library research is needed to obtain a theoretical framework as secondary data to solve the main problem this writing.

2.2 Field Research

A method of collecting data through the office of the Legal Aid Institute as a forum for defenders or legal advisors in providing legal assistance to suspects or defendants in the judicial process and Field Research is carried out by:

- a. Observation, namely making observations directly or indirectly on the object of research.
- b. Interview, which is to conduct direct interviews with the relevant officers, namely investigators, public prosecutors, and judges using either a list of questions or direct questions and answers to respondents.

III. Results and Discussion

3.1 Understanding, Functions, and Objectives of Defenders in Providing Legal Aid

Indonesia is a state of law, this conception of a state of law is closely related to human rights, a state cannot be said to be a state of law as long as it does not give respect and guarantees for human rights because the characteristics of the rule of law are the recognition and protection of the existence of human rights, free and impartial justice, legality in the sense of law in all its forms.

The legal guarantees and protections and human rights are recognized in the 1945 Constitution, as well as legal guarantees and protections for the rights of suspects or defendants who are suspected or accused of committing a criminal act must be guaranteed and respected as appropriate, one alternative to guarantee and protect the rights of the suspect or defendant is by providing legal assistance by the defender or legal advisor.

The presence of a defender or legal adviser is very important in providing legal assistance to a suspect or defendant who is blind to the law will be able to provide his defense against the allegations or charges faced if he does not know the ins and outs of the existing law, especially in the process of resolving criminal cases.

a. Understanding the Defender

Simply put, in our country since time immemorial that the defender is defined as a person who provides legal assistance to his clients both in civil cases and criminal cases before the trial, the meaning given here is an understanding in a narrow sense because of the work or tasks carried out by the attorney defense is only limited to the trial in court.

The definition of a defender in a broad sense is a person who assists justice seekers in the process of resolving cases in court, the meaning given here shows that the provision of legal assistance by defenders is not only limited to trials in court but something related to the settlement of criminal cases.

The assistance provided here is assistance in the form of services to provide legal advice and act as a companion and a person's power to resolve problems that arise due to legal disputes concerning a person's rights and obligations both outside and before the court as well as acting as a companion and defender of someone accused of committing a crime in criminal cases.

In the big Indonesian dictionary, it is listed among others as "Defenders": 1) People who defend, 2) Legal experts who are selected or appointed to defend the defendant in court.

The formulation of the dictionary above in point 2, according to Leden Marpaung, SH, "is not appropriate, because the defender in carrying out his duties is not only in court but during the investigation the defender has played a role in carrying out his duties".

In Law No. 14 of 1970 concerning the main provisions of judicial power, articles 36 and 37, there is a term legal advisor which is obliged to provide advice and help facilitate the settlement of cases by upholding Pancasila, law, and justice.

The terms defender and legal advisor are two words that indicate very different functions and duties, the defender is the person who defends while the advisor is the person who gives advice.

The term defender contains the meaning which includes efforts to help and protect everyone who needs help and protection when someone is experiencing a crisis in the legal field, in other words from the perspective of the struggle for the interests of the suspect or defendant the term defender is more appropriate to use.

The defender tries to defend someone who is pressed, someone who is weak faces a strong party from him so that a balance is reached and to keep someone from being harmed by their rights, so a defender in a criminal case must be a helper and helper for a suspect or defendant to be subject to law or at least subject to the lightest law.

The term advisor in general means a person who provides advice to others who need it, so a legal advisor is someone who provides advice on legal issues to someone who is involved in a case or in this case a suspect or defendant.

In everyday life in the community, the term that is so popular for those who because of their work provides legal assistance is known as a defender, while the term legal advisor is better known among law servants or law enforcers.

In the law the term used is legal advisor, meanwhile, the Ministry of Justice uses two terms, namely before 1970 with the name advocate and the period after 1970 with the name of a lawyer, these two terms are used in the letter of appointment for those who have a law degree and have permanent employment in law.

Based on the description that has been conveyed above regarding the meaning and terms of defenders and legal advisors, in principle, they have the same thing in carrying out their duties, namely assisting someone who needs it.

b. Functions and Objectives of the Defender in Providing Legal Aid

Work of a defender or legal advisor is a very noble and honorable job because the defender or legal advisor in carrying out his work or duties aims to create and enforce law and justice consists of two parts, namely, first: Effective legal aid is an essential condition for the proper functioning and integrity of the judiciary, and second: That legal aid is a demand from humanity, even more so Berry Metzger tries to add other reasons:

1. To build a unified national legal system.
2. For the more effective implementation of social welfare regulations for the benefit of the poor.
3. To add a greater sense of responsibility from government officials or the bureaucracy to the community.
4. To foster public participation in government.
5. To strengthen the legal profession.

Furthermore, Afnan Buyung Nasution stated that for the Indonesian people the legal aid program is at least clear as stated in the articles of association of the Legal Aid Institute, namely providing legal aid services to people who need it, having the ambition to educate in the broadest sense with the aim of growing and foster awareness of rights as legal subjects and participate in carrying out legal reform and improvement of law implementation in all fields.

Based on the description that has been presented above, it shows us that the function and purpose of legal aid provided by legal defenders or advisors has a very broad scope in the sense that the assistance provided is not only aimed at providing legal assistance in resolving cases, especially case settlement. criminal law but also to provide services for justice seekers, educate, grow and foster public legal awareness and participate in implementing the development of national law in every aspect of life.

3.2 Groups of People Who Can Provide Legal Aid

Based on the Decree of the Chief Justice of the Supreme Court Number .5/KMA/1972 dated June 22, 1972, we can see the groups of people who can provide legal assistance, commonly referred to as defenders or legal advisors.

Based on the decision of the Chief Justice of the Supreme Court, we can classify those whose job is to provide legal assistance into three groups, namely:

- a. Lawyers (Advocates / Procureurs)
- b. Practical Lawyers (Prokol)
- c. People who incidentally provide legal assistance

a. Lawyers (Advocate/Procureur)

What is meant by Lawyers (Advocate/Procureur) are people or those who for their livelihood provide themselves as defenders in criminal or civil cases or act as proxies/representatives of the litigants and have received letters of appointment. from the Ministry of Justice of the Republic of Indonesia, while the Minister of Justice appoints and dismisses a lawyer.

To be appointed as a lawyer, he must meet several requirements, including:

1. Indonesian citizen.
2. Holds a Bachelor of Laws.

3. Apply to the Minister of Justice through the Head of the local High Court.
4. Those who have passed the examination and have obtained a letter of appointment from the Minister of Justice are required to register as soon as possible with the clerk of the local high court.

The duties and obligations of a lawyer or advocate are, we can see in the articles of association of the Indonesian Advocates Association which among other things reads as follows:

The duties of an advocate's position are to freely and boldly but full of responsibility to provide legal assistance and legal advice, both outside and in front of a court of law to people who need it because their life is threatened, their freedom, their rights, and their good name by devoting all their expertise based on science so that they help in upholding the law, justice and truth (Abdurrahman).

The duty of an advocate or lawyer is a noble and human task that cannot be separated from objective truth.

In carrying out their duties to avoid things that are not desired by the parties, advocates must and are obliged to heed the advocate code of ethics that has been set by PERADIN (now IKADIN).

Article 1 of the code of ethics stipulates that:

1. Advocates in carrying out their duties should not be afraid of anyone, except for the law that he upholds.
2. An advocate in his life must not take actions that are not following the norms of honor, he must have impeccable personal behavior, he must be an active person who works with great attention to issues concerning the community and its members public.
3. Advocates must always be willing to help people who are in trouble, not only looking for material benefits for themselves but especially to serve the interests of the community.
4. Advocates must have a clear mind, agility in speaking and writing, an orderly way of working, and must be fully trusted.
5. Advocates work freely and are not bound by anyone in organizing a case.

b. Practical Lawyers (Prokol)

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What is meant by Practical Lawyers (prokol) based on Article 1 of the regulation of the Minister of Justice of the Republic of Indonesia No.1 of 1965 are those who provide legal assistance as a means of livelihood without being appointed by the Minister of Justice and are obliged to uphold law and justice by giving advice, representing or assisting someone, a body, or a party outside or inside the court.

Article 3 of the regulation of the minister of justice, states that to carry out protocol work, the following requirements must be met:

1. Indonesian citizen.
2. Pass the examination held by the Head of the District Court on civil procedural law, criminal procedural law, civil matters, and criminal law.
3. Has reached the age of 21 years and has not reached the age of 60 years.
4. Not a civil servant or equivalent to a civil servant.

For those who want to become practicing lawyers for their livelihood, they must first pass an exam administered by the district court whose materials are prepared by the local high court while a permit from a practicing lawyer is issued by the local high court.

Applications for registration of the practice lawyer exam (prokol) are made at the local district court clerk, those who have passed the exam before carrying out their work

must register at the district court clerkship which includes their place of residence and take an oath.

Based on what has been described above, especially regarding lawyers (advocates/procureurs) with practicing lawyers or prokol, if we pay attention there is a difference, as for the difference, that a lawyer (advocate) must have a law degree while prokol or practicing lawyers are not necessarily law graduates, as long as he has expertise in the field of law and has passed the examination administered by the district court, besides that the lawyer who appointed him is the minister of justice while the prokol or practicing lawyer is not appointed by the minister of justice but is enough to be registered with the clerk of the local district court then he can practice providing assistance law.

c. People Who Incidentally Provide Legal Aid

Besides those who provide legal aid as their livelihood, some provide legal assistance incidentally before the court.

What is meant by the provision of incidental legal aid is the provision of legal aid carried out by those who are not included in the class of lawyers (advocates) or practicing lawyers (prokol), those who provide incidental legal assistance if they are going to provide legal assistance in a case are required to apply to the clerk of the district court where the case will be heard, if there is no certificate from the head of the district court where the case will be heard, it will not be allowed to provide incidental legal assistance.

3.3 Legal Basis for Legal Aid for Defenders

Providing legal assistance for a suspect or defendant who is involved in a criminal case is a right that he has, the right to receive legal assistance is guaranteed and protected by the laws and regulations in force in our country.

In Het Herziene indonesisch commonly abbreviated HAIR Reglement or legal aid made by the defense can be seen in the chapters as follows:

- a. Article 83 paragraph (6), concerning the obligation to ask the suspect magistrate were sentenced to death if he wants, accompanied by a legal scholar or legal expert in court.
- b. Article 250 paragraph (5), regarding legal assistance in the trial, especially regarding cases that are threatened with the death penalty, in this case, the judge can appoint members of the court who are legal experts, then Article 250 paragraph (6) states that the legal assistance provided is legal just.
- c. Article 254 stipulates the right of every person accused of committing a criminal act to obtain legal assistance, not only limited to criminal cases punishable by the death penalty.
- d. Article 268 paragraph (4) regulates the right to ask questions to witnesses at trial after the examination of witnesses is completed if it is deemed necessary in the interests of the accused.
- e. Article 290 paragraphs (1) and (2) stipulates provisions at the final stage of the examination of criminal cases in trial which determine that the prosecutor's requisites are given the opportunity for the defendant and his defense to present their defense.

3.4 Defense at the Examination Level in Court

As a defender or legal advisor who has been authorized by the defendant to accompany and defend the case, the defense or legal advisor before the trial begins must first study the prosecutor's indictment and must master the contents of the indictment This is considered important, meaning that it is for the preparation of the defense in the trial court later.

Public defenders or advisors must pay close attention, thoroughly and examine the requirements of the public prosecutor's indictment, whether the public prosecutor's indictment is clear or not, whether or not this is closely related to proving, whether the criminal act charged in the indictment has expired or not, whether there has been a judge's decision on the criminal act that has obtained permanent legal force that the defendant has previously been prosecuted or so on, which in the past In essence, as a defender or legal advisor, one must be careful and thorough in understanding and assessing the indictment and must also be aware of legal developments.

The defenses that can be made by the defense or legal counsel at the level of examination in court against the defendant are as follows:

1. File a rebuttal or exception;
2. Asking questions that can benefit the defendant.
3. Submitting evidence that relieves the defendant.
4. Propose witnesses that lighten the defendant.
5. To object to questions from judges or public prosecutors that are ensnaring, suggestive, questions that have nothing to do with the case and questions that are not polite, because these questions are prohibited by law.
6. Refuting the evidence against the defendant.
7. Submit a plea (defense) as a refutation of the prosecutor's demands.
8. File a duplicate of the prosecutor's replica.
9. Contains appeal, cassation, herzeming of the decision handed down by the examining judge after holding negotiations with the defendant and making a memorandum of appeal or a memorandum of cassation.

Examination of the Exception Level

As previously mentioned, the defenses that can be made by the defense or legal counsel at the examination level at trial, one of which is to file an exception or a rebuttal.

The important meaning of the exception or defense is as a means of defense, which means to avoid a decision on the subject matter of the case, because if the judge accepts the exception or defense of the defense, the examination of the principal case is no longer necessary, meaning that the case file is delegated by the public prosecutor.

This exception can be filed by the defense or legal advisor after the public prosecutor has read the indictment and after the judge at the trial has asked whether the defendant understands the public prosecutor's indictment.

The material for this exception is regulated by article 156 paragraph (1), the full formulation of which states that, in the event or legal advisor submits an objection, that the court is not authorized to hear the case or the indictment cannot be accepted, the indictment must be annulled, then after being given the opportunity to the public prosecutor To express his opinion, the judge considers the objection to make a decision.

Based on article 156 paragraph (1) of the Criminal Procedure Code, it can be concluded that there are three objections that can be submitted by the defense or legal advisor as a basis for exceptions, namely:

1. The court is not authorized to hear the case.
2. The charge cannot be accepted.
3. The indictment is cancelled.

a. The Court No Authority to Judge the Case

This exception or denial is commonly referred to as onbevoegdheid, namely, an exception or denial regarding the inability to judge which consists of onbevoegdheid in

relative terms (relative competence) and onbevoegdheid in absolute terms (absolute competence) while onbevoegdheid absolutely relates to the judicial environment.

b. Unacceptable Charges

Regarding unacceptable charges, this can be in the form of:

1. The act that is indicted against the defendant is not a criminal act, for example being charged with the crime of theft while the defendant only takes renellius goods (goods that have no owner).
2. The act charged with the defendant has expired his right of prosecution as regulated by article 78 of the Criminal Code.
3. The act that has been charged to the defendant has been tried before, the defendant cannot be tried again as regulated by article 76 of the Criminal Code.
4. The act that is charged to the defendant is a criminal offense while the complaint regarding the act has not been or does not exist.
5. The defendant's act is not a criminal act but a civil act.

c. Indictment Letter Canceled

In filing an exception or denial that the indictment must be cancelled, this is due to:

1. The indictment does not meet the formal requirements as stipulated in Article 143 paragraph (2) letter b, namely regarding a careful, clear and complete description of the crime charged with mentioning the time and place where the crime was committed.
2. The indictment is null and void, this is done because the formulation of the indictment, for example, does not contain one element of the offense (MA jurisprudence dated June 25, 1983 Reg.No.116 K/Pid/1982).

Verdict against demurrer filed by advocate or legal counsel was made after hearing the public prosecutor response, while the decision may be handed down by the judge against these defenders exception is:

1. Eksepsi or defense can be accepted, in this case means the former case has been filed by prosecutors Public Prosecutor returned.
2. Exceptions or objections cannot be accepted, in this case means that the examination of the subject matter of the case immediately begins by examining the witnesses presented by the public prosecutor.
3. The exception or objection is decided together with the main case, in this case the decision in the exception is made after the examination of the main case, namely at the same time as the decision whether the defendant is guilty or not of the criminal act he is accused of.

Based on the description above, defender or lawyer doing legal aid or defense at the level of these exceptions need to do several things including:

1. Defender or legal advisor should be observant and careful to understand the formulation of the articles indicted by the public prosecutor by popularity in article 156 paragraph (1) of the Criminal Procedure Code.
2. That the defense must pay attention to the time limit or time that is possible in filing an exception, namely after the public prosecutor has read his indictment because once the main examination of the case has been entered, it is no longer possible to file an exception.
3. The defense must have broad insight and knowledge to interpret each of the existing articles, especially the articles that are charged to the defendant.

The term pledoi is commonly referred to as a defence, said pledoi in the large Indonesian dictionary issued by the Ministry of Education and Culture which states that a

pledoi is a defens⁴ speech against a defendant read by an advocate (defender) or the defendant himself. Education is a very important human need because education has a duty to prepare Human Resources (HR) for the development of the nation and state (Pradana et al, 2020).

¹ The submission of this plea is made in writing, this can be seen in the sound of article 182 paragraph (1) point c of the Criminal Procedure Code, namely, the demands, defenses and answers to the defense are made in writing and after being read out, they are immediately submitted to the judge, the chairman of the session and their derivatives to the party who interested.

In this requisitoir, the public prosecutor expresses the proof of each element of the offense based on valid evidence, so in the pleading the defense or legal advisor tries to examine the weaknesses of the evidence proposed by the public prosecutor.

1. The defense or legal advisor must always strive towards the subjective element, namely, "the defendant is not guilty", by stating things that make it possible that the defendant cannot be accounted for by highlighting the dolus (criminal act) element in the indictment.
2. The defender or legal advisor must carefully observe the other elements and if there is a perception of a term in the indictment or requisitoir (criminal charge), the defender must grant it, this seems to be inappropriate but the goal is noble, namely to make it true thoroughly research the matter and have strong confidence in making a decision later.
3. Defenders need to also observe the element "against the law", because every offense, whether formulated in an article of law or not formulated, contains an element against the law.
4. Defenders or legal advisors must also observe every element or perception of a word by expressing based on the official explanation of the law or article in question, jurisprudence, opinions of experts, so that efforts to convince the judges of the part¹¹ trial judges will be carried out properly good.

Based on the above description well, it is concluded that the main point in the preparation of the plea carried out by the defense or legal advisor requires accuracy, precision, and foresight to understand the indictment, the elements of the criminal act charged and the law of proof.

In order to seek and find the material and objective truth of the defender or legal advisor, a mental attitude is required.

1. Love truth, justice, and honesty.
2. Attitude to maintain truth, justice, and honesty based on applicable law.
3. In the absence of the three things mentioned in point 1, a defender or legal adviser must maintain the existing authority, applicable laws and legal provisions and their implementing regulations.

The defense that can be made by the defense or legal adviser against the defendant at the trial at trial, among others, is to file an exception (tankis) and pleas that essentially have the same goal, namely to fend off or reject all charges or accusations from the public prosecutor because there is no legal procedure as appropriate and want to put in place the relevant law for the accused.

The operational technical strategic steps that can be taken by a defender in understanding and observing the weaknesses of the public prosecutor's indictment are:

1. First of all, observing and understanding the description by description of the contents of the public prosecutor's indictment.
2. Then analyze the descriptions in the indictment in order to perceive the existing problems and weaknesses.

3. After analyzing and perceiving the weaknesses in the indictment, then the legal basis or legal basis for the weakness of the indictment is sought. This can be in the form of laws and regulations, jurisprudence and expert opinions.

Regarding the plea or what is more commonly referred to as the defense is a form of defense carried out by the defense in court after the prosecutor reads the criminal charge (requisitoir) the trial in which the defense believes that the defendant is not the perpetrator or if the defendant is the perpetrator, efforts are made to give the lightest possible sentence.

The role of the defense in submitting this plea is active. It means that the defense can present positive and creative arguments against the articles indicted by the public prosecutor based on the evidence and facts revealed in the trial of the applicable laws and regulations. The defense must also include things that benefit the defendant in the plea he submits.

The operational technical steps that the defense can take in its plea are:

1. That the defense must understand and carefully examine each element of the article indicted and the facts and evidence revealed in the trial.
2. The defense then analyzes every piece of evidence and facts revealed in the trial in order to conclude the existing problems and those that are relevant according to the law.
3. After concluding the relevant problem according to the law, the legal basis and jurisprudence and opinions of experts related to the problem will be sought.

It should be noted that a defense attorney in submitting his plea must lead to things that are beneficial, if based on the evidence and facts revealed in the trial there is something the public prosecutor has indicted, then the defense must find things that can use it.

Things that need to be done by the defense in assisting the defendant in conducting examinations at this trial is to hold a suspension of detention. The defender obtains information from the defendant freely without any obstacles. This is to facilitate the preparation of the defense at trial, especially regarding exceptions and pleas filed by the defense.

In connection with the presence of the defense in accompanying the defendant in this trial, especially regarding the role of the defense against the exceptions and pleas that he submitted, according to the results of the author's interview with Mr. Muhammad Zais, SH., (Prosecutor at the Yogyakarta Municipal District Prosecutor's Office). There is a problem, in fact the prosecutor as the public prosecutor will be happier if there is a defense or legal advisor in prosecuting a case. Because with the presence of a defense or legal advisor in accompanying this defendant, a public prosecutor in prosecuting will be more careful and make no mistakes .

That the presence of a defender or legal advisor itself is in the context of a joint effort to find the material truth. Besides that, with the presence of a defense, a person's article is in accordance with what is intended by the legal advisor.

IV. Conclusion

² A suspect who is suspected of committing a criminal act is not necessarily a guilty person, nor is a defendant charged with a criminal act not necessarily guilty because in our legal state recognizes the principle of "the presumption of innocence", so the suspect or defendant must be considered innocent. guilty before there is a judge's decision that already has permanent legal force. The presence of a defender in the settlement of a criminal case in addition to accompanying a suspect or defendant and defending him is also due to moral and juridical responsibility as one part of law enforcement officers who

work together same as other law enforcers trying to find the material truth. In this criminal justice process, the provisions of Article 54 of the Criminal Procedure Code emphasize the rights of the suspect be accompanied by the defense or legal counsel at every level of examination, in other words, that the suspect or defendant has the right to have contact with the defender from the time of the preliminary examination until the time of the preliminary examination in court.

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