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The Right to Remain Silent vs. Defendant Statements: Examining Indonesia's New Criminal Procedure Code

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Abstract:
Article 142 of the New Criminal Procedure Code introduces the right to remain silent, yet it conflicts with Article 235, which continues to recognize defendant statements as valid evidence. This normative discrepancy creates legal uncertainty regarding the protection of suspects' and defendants' rights during the evidentiary process in Indonesia's judicial system. The aim of this research is to examine the existence of Defendant Statements in Indonesia's New Criminal Procedure Code in light of the Right to Remain Silent principle. The research adopts a normative legal method supported by a comparative approach in the United States of America and the Netherlands. It analyzes statutory provisions and compares them with legal systems that firmly uphold the privilege against self-incrimination. The findings demonstrate a clear contradiction between Article 142, which guarantees the Right to Remain Silent, and Article 235, which still recognizes Defendant Statements as valid evidence. This inconsistency creates legal uncertainty and undermines the effective protection of suspects' and defendants' rights during the evidentiary process from a critical perspective, suggesting that New Criminal Procedure Code has not fully embraced the principle of due process. It also creates the potential for abuse of power, particularly in practices that pressure defendants into providing statements. This study, therefore, proposes harmonising Articles 142 and 235 to ensure coherence between human rights principles and evidentiary mechanisms. The study contributes to this by offering a doctrinal and comparative framework to reinforce the implementation of the non-self-incrimination principle within Indonesia's criminal justice system.

Keywords:
evidence; human rights; right to remain silent; suspect.

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Introduction

In the modern landscape criminal justice system, suspects and defendants possess fundamental rights that the state must guarantee and fulfill through law enforcement authorities at every stage of the judicial process. Originally outlined in the old Criminal Procedure Code of 1981, these protections have been significantly redefined within the New Criminal Procedure Code of 2025. Central to this legislative evolution is the right to remain silent, famously known in the United States as the *Miranda Rules*, which ensures that no individual is compelled to testify against themselves or face self-incrimination. This principle is firmly supported by international instruments, most notably Article 14, paragraph (3)(g) of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law No. 12 of 2005.[1]

[1] Institute for Criminal Justice Reform (ICJR), "Mengenal Konvenan Internasional Hak Sipil Dan Politik," 2012.

The New Criminal Procedure Code reflects a shift towards a system based on due process of law, emphasising fairness, justice, and protection against wrongful punishment, rather than a law enforcement oriented approach. The right to remain silent is an important safeguard against physical coercion and psychological pressure, which can lead to unreliable confessions. It also preserves human dignity and procedural justice. However, its implementation is inconsistent. Article 142(f) grants suspects the right to refuse to give statements, yet Article 235 still recognises statements made by defendants as evidence. This legislative contradiction creates legal uncertainty and risks the abuse of power, thereby undermining the protection intended by the right to remain silent. Furthermore, the Indonesian evidentiary system has traditionally placed immense weight on the defendant's testimony, often overlooking the fact that the burden of proof should rest entirely with the Public Prosecutor. In practice, when a defendant chooses to remain silent, it is frequently perceived negatively, potentially increasing the judge's belief in the defendant's guilt. This dynamic poses a direct threat to the presumption of innocence, a principle guaranteed by Article 8 of the Judicial Authority Law 2009, which mandates that every individual must be treated as innocent until a final court ruling proves otherwise. Forcing a defendant to speak, or interpreting their silence as a sign of culpability, treats the individual as a mere object of examination rather than a subject whose rights are protected.[2]

Research on the right to remain silent in the context of criminal procedural law has advanced significantly in Indonesia and globally. Nevertheless, several limitations persist. Saraswati found that Indonesia has not explicitly adopted Miranda rights, meaning that suspects' rights depend on the discretion of law enforcement. However, the study is normative and does not address the normative conflicts in the New Criminal Procedure Code.[3] Somomoeljono and Hardy emphasized the inadequate implementation of Miranda principles and the subsequent human rights violations, primarily focusing on practical aspects rather than evidentiary norm structures.[4] Furthermore, Handoko showed that the right to remain silent differs conceptually from Article 52 of the New Criminal Procedure Code. Under the Miranda Rules, the right to remain silent is one that must be explicitly informed by the state; in Indonesia's New Criminal Procedure Code *(Kitab Undang-Undang Hukum Acara Pidana – KUHAP)*, however, it is interpreted only implicitly through the phrase 'providing a statement freely'. While this study successfully identified these conceptual differences, it has yet to link them to implications for the criminal evidentiary system.[5]

The relationship between the right to remain silent and the admissibility of statements made by defendants in criminal proceedings has not been specifically examined in any prior research. Most studies focus on protecting human rights and putting them into practice, but do not think about how this affects the rules for evidence. And there hasn't been any research

[2] Purnadi Purbacaraka and Adami Chazawi, *Hukum Pembuktian Tindak Pidana* (Depok: Rajawali Pers, 2010); M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2016).

[3] Sekarwangi Saraswati and Olim Narzullayev, "Integrating Miranda Rights to Promote Human Rights Compliance," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 3 (September 14, 2025): 459–85, https://doi.org/10.53955/jsderi.v3i3.94.

[4] Suhardi Somomoeljono and Maryzka Tiara Hardy, "The Relevance of the Miranda Rule for the Protection of Human Rights in Law Enforcement in Indonesia," *The International Journal of Law Review and State Administration* 3, no. 4 (2025): 75–82, https://doi.org/https://doi.org/10.58818/ijlrsa.v3i4.235.

[5] Priyo Handoko and Anis Farida, "Konsep Miranda Rule Dalam Hukum Pidana Di Indonesia Perspektif Maqasid Al-Shari'ah," *Al-Jinayah Jurnal Hukum Pidana Islam* 7, no. 2 (December 2021): 386–408, https://doi.org/10.15642/aj.2021.7.2.386-408.

that has really gone into how the New Code has these internal inconsistencies, especially the tension between strengthening suspects' rights and maintaining the validity of defendants' statements as valid evidence. The objective of this study, therefore, is to examine and analyze the inconsistency between the regulation of the right to remain silent and the use of suspects' and defendants' statements as evidence within the New Criminal Procedure Code, particularly in relation to the evidentiary system within the country's criminal justice framework. By prioritizing a normative inconsistency approach, this research critically examines the conflict between the recognition of this right in Article 142 and provisions that maintain the admissibility of statements in the evidentiary system. Thus, this research contributes an integrative analysis of human rights and evidentiary law, offering a comprehensive understanding of the legal implications of recognizing the right to remain silent in Indonesia's legal reform

Method

This study aims to examine and analyze the inconsistency between the regulation of the right to remain silent and the use of suspects'/defendants' statements as evidence within the New Criminal Procedure Code, particularly in relation to the evidentiary system within the country's criminal justice framework. To achieve this objective, the study employs both a statutory and a conceptual approach. Additionally, a comparative approach is integrated by analyzing the legal systems of the United States and the Netherlands. This comparison examines how the right to remain silent is implemented in both common law and civil law traditions, the latter being particularly relevant to Indonesia's legal heritage, and to evaluate their alignment with international human rights standards. The former is used to analyze the relevant laws and regulations governing criminal procedure, while the latter is applied to examine the legal doctrines, principles, and theoretical frameworks concerning the right against self-incrimination and evidentiary rules. The data used in this study consist of secondary data, including: statutory regulations, such as the Criminal Procedure Code and the New Criminal Procedure Code; international legal instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the Miranda Rules, which were developed within the US legal system; official legal documents and explanatory texts, relating to criminal procedure, such as the ICCPR Ratification Law 2005, the Judicial Authority Law of 2009, and the Constitutional Court's Decision No. 65/PUU-VIII/2010 regarding the protection of defendants' rights in a fair trial; and academic manuscripts, such as journal articles, legal textbooks and prior research, discussing the right to remain silent and evidentiary law. These data were obtained through systematic document collection. Statutory regulations and official legal documents were accessed and downloaded from authorized government websites and official legal databases. International instruments were retrieved from official United Nations repositories and recognized legal platforms. Academic manuscripts were collected from online academic databases, such as Google Scholar, institutional repositories, and indexed journal platforms. The collected data were organized and presented descriptively to illustrate the regulatory framework and conceptual basis of the right to remain silent. Qualitative methods were employed for the analysis, involving the

interpretation, comparison, and evaluation of legal norms and doctrines.[6] A comparative analysis was specifically conducted to identify inconsistencies between national provisions and international standards, as well as internal contradictions within New Criminal Procedure Code regarding the use of defendants' statements as evidence.

Discussion

1. The Development of the Right to Remain Silent under Miranda Doctrine and International Criminal Procedure.

Most Western countries recognize the right to remain silent and implement it through warning and refusal requirements, adopted from the U.S. Supreme Court's decision in the case of Miranda v. Arizona of 1966. The philosophy behind this decision is that a suspect's confession during the investigation process should not be obtained through unlawful means. Suspects must be informed of their rights throughout the investigative process, up to and including the trial. Although Miranda tragically passed away in a bar, his case is considered one of the 'landmark decisions' in the U.S. justice system.[7] The Miranda Rules, established in the United States in 1966, first emerged in the Miranda case in Arizona. Miranda was accused of rape and was not given the opportunity to consult an attorney. Miranda signed the interrogation report without the presence of an attorney, and he was also coerced into confessing through verbal pressure during the interrogation process.[8] Miranda Rules have since been adopted by various legal systems around the world, including Indonesia, in which they have been incorporated into the Criminal Procedure Code and the New Criminal Procedure Code.

Suspects/defendants are entitled to the rights specified in the regulations, ensuring that a person, once designated as a suspect, enjoys the same rights before the law.[9] This is particularly important because, even if the suspect/defendant has committed a criminal offense, they must still be treated humanely, and their civil rights or constitutional rights, which are inherent to all individuals, must not be violated.[10] The application of the Miranda Rules is not an innovation in the judiciary, but rather the implementation of principles that have long been recognized and applied. The right to remain silent creates a preventive rule, meaning that a detained suspect/defendant can wisely exercise this right during interrogation or when giving a statement.[11] The Miranda Rules also require police officers and public prosecutors to inform suspects undergoing custodial interrogation of their right to remain silent and their right to legal counsel, ensuring that these protections are communicated from

[6] Muhammad Rijal Fadli, "Memahami Desain Metode Penelitian Kualitatif," *HUMANIKA* 21, no. 1 (April 2021): 33–54, https://doi.org/10.21831/hum.v21i1.38075.
[7] FJP Law Offices, "Hak Tersangka–Miranda Rules," 2019.
[8] Indra Karianga and Pidel Kastro Hutapea, "Prinsip Miranda Rules 'The Right To Remain Silent' Dalam Perspektif Perbandingan Hukum," *Media Iuris* 2, no. 3 (February 2020): 393, https://doi.org/10.20473/mi.v2i3.17375.
[9] Anak Agung Putu Surya Wiguna, I Made Sepud, and I Nyoman Sujana, "Hak-Hak Tersangka (Miranda Rule) Pada Tahap Penyidikan Dalam Kitab UU Hukum Acara Pidana," *Jurnal Konstruksi Hukum* 1, no. 1 (August 2020): 51–56, https://doi.org/10.22225/jkh.1.1.2128.51-56.
[10] Muammar Muammar and Wahdaniah Baharuddin, "Prinsip Miranda Rule Sebagai Hak Asasi Tersangka Dalam Sistem Peradilan Pidana Indonesia," *PATTIMURA Legal Journal* 1, no. 3 (November 2022): 201–11, https://doi.org/10.47268/pela.v1i3.7504.
[11] Glenys A. Holt and Matthew A. Palmer, "Individual Attitudes Toward Coerced Confessions Change Perception of Confession Evidence: Why Jurors May Accept or Reject Poor-Quality Confessions," *Psychiatry, Psychology and Law* 31, no. 6 (November 2024): 997–1014, https://doi.org/10.1080/13218719.2023.2242454.

the outset.[12] Interrogation is an important part of a criminal investigation. Information obtained through this process can serve as direct evidence. However, under modern criminal procedure, courts must still seek and examine other forms of evidence, even when the defendant has admitted guilt.[13]

Silence plays an important role in interpersonal communication generally, and it is given particular significance within police interrogations. Over half a century ago, the Supreme Court of the United States made a statement that has since been enshrined in legal precedent. In its 1966 ruling in Miranda V. Arizona, the Court observed that individuals suspected of a crime are likely to interpret 'silence in the face of accusation as being itself damning'.[14] Subsequently, in this ruling, the Supreme Court decided that the police must inform detained suspects of their constitutional rights to remain silent and to be accompanied by an attorney. This is aimed at protecting citizens from intimidation during police interrogations. The Supreme Court provided a solution: Any statement obtained from a detained suspect without a knowing, intelligent, and voluntary waiver of these rights would be considered illegal and, therefore, inadmissible in court. A year later, In re Gault in 1967 extended these rights and procedures to juveniles appearing in juvenile court.[15]

The Miranda Rules constitute constitutional rights held by suspects or defendants.[16] These rights include the right to refuse to answer relevant questions by officials during criminal proceedings, as well as the right to representation or the presence of legal counsel throughout the investigation and until the conclusion of the trial process. These universal constitutional rights, as outlined in the Miranda Rules, apply in almost all legal jurisdictions worldwide. This right helps individuals avoid making statements that could self-incriminate. It also includes provisions that the court should not make any comments or draw conclusions prejudicial to the defendant due to their refusal to answer questions before or during the trial. The Miranda Rules protect suspects from physical and psychological torture during interrogation, and go beyond being a mere formal procedure. The right to remain silent balances state power and individual rights, thereby ensuring a fair judicial process. The United States Supreme Court has also stated that the right to remain silent cannot be construed as a sign of guilt, as it upholds the principle of *due process of law*.[17] Therefore, the Miranda Rules have become a vital pillar in contemporary criminal justice systems for protecting human rights. It is utilized in many countries, including the United States and the Netherlands, to protect suspects/defendants from becoming victims of torture or psychological pressure during interrogation. Consequently, the recognition of the right to remain silent is a constitutional obligation of states that uphold human rights, not merely a moral decision.[18]

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[12] Shih-chun Steven Chien, "Miranda in Taiwan: Why It Failed and Why We Should Care," *University of Pennsylvania Asian Law Review* 17, no. 1 (2022): 177–88.
[13] Arta Bilalli, "Interrogations And The Right To Remain Silent - A Comparative Approach," *SEEU Review* 11, no. 1 (December 2015): 69–78, https://doi.org/10.1515/seeur-2015-0010.
[14] Mark D. Snow et al., "Remaining Silent During Interrogation," *Psychiatry, Psychology and Law* 31, no. 2 (March 2024): 179–88, https://doi.org/10.1080/13218719.2023.2175074.
[15] Ray Bull and Iris Blandón-Gitlin, *The Routledge International Handbook of Legal and Investigative Psychology*, ed. Ray Bull and Iris Blandón-Gitlin (London: Routledge, 2019), https://doi.org/10.4324/9780429326530.
[16] Handoko and Farida, "Konsep Miranda Rule Dalam Hukum Pidana Di Indonesia Perspektif Maqasid Al-Shari'ah."
[17] Legal Information Institute, "Miranda Warning," Cornell Law School, 2023.
[18] Andrzej Sakowicz, "The Right to Silence in the EU Directive 2016/343 on the Strengthening of Certain Aspects of the Presumption of Innocence from the Perspective of Polish Criminal Proceedings," *Review of European and Comparative Law* 41, no. 2 (August 2020): 55–80, https://doi.org/10.31743/recl.6155.

The meaning of the right to remain silent is that an individual has the right to remain silent in public, implying they are under no obligation to speak. Secondly, there is an element of claiming. The individual has a claim that others must not break her silence; this involves duties on others. The individual can waive others' duty not to break her silence. It also involves an immunity element. No one can take away an individual's privilege.[19] Interpersonal communication in general, and police interrogations in particular, are both significantly impacted by silence. More than 50 years ago, the Supreme Court of the United States said that suspects questioned by police might think that not saying anything when accused of a crime is a bad thing.[20] In the United States, these rights are commonly known as the 'Miranda Rules,' which hold that a suspect must be informed of certain legal rights, including the Fifth Amendment right to remain silent and the Sixth Amendment right to legal counsel, before undergoing interrogation. If law enforcement fails to properly inform the suspect of the Miranda Rules or if the suspect does not receive these rights, any interrogation resulting from such failure is excluded from evidence. The Miranda Rules are as follows:[21]

a. You have the right to remain silent;
b. Anything you say can and will be used against you in court;
c. You have the right to talk to an attorney and to have that attorney present with you during interrogation;
d. If you cannot afford an attorney, one will be appointed to represent you before the interrogation if you wish;
e. You may decide at any time to exercise these rights and not answer any questions or make any statements;
f. Do you understand each of these rights that I have explained to you? and
g. Considering these rights, do you wish to speak with us now?

As is well known, the right to remain silent is not a singular right, but rather a set of procedural rules designed to protect the defendant's self-incrimination. The right to choose whether to answer questions or testify is guaranteed, ensuring that the defendant is not coerced into confessing guilt. However, there is ongoing debate over how this right should be protected within the context of a criminal trial, as the consequences of exercising the right to remain silent may be determined by the judge or jury.[22] The right to remain silent is influenced by several factors, including the presence of other suspects, attitudes toward the police, and perceptions about the strength of the evidence, all of which play a significant role in the decision to remain silent. Legal assistance influences the the defendant's strategic decisions, particularly for first-time offenders.[23]

The term 'interrogation' in the Miranda case does not only refer to explicit questioning but also to words or actions by the police (other than those normally associated with arrest

[19] Dan Degerman and Francesca Bellazzi, "Epistemic Arguments for a Democratic Right to Silence," *The Philosophical Quarterly* 74, no. 4 (September 2024): 1137–58, https://doi.org/10.1093/pq/pqad128.
[20] Snow et al., "Remaining Silent During Interrogation."
[21] Dakota Wing, "'It's Just Like on TV': An Analysis of the Mirandizing Process on TV," *Criminal Justice Review* 50, no. 2 (June 2025): 191–204, https://doi.org/10.1177/07340168231196995.
[22] Yvonne Daly et al., "Human Rights Protections in Drawing Inferences from Criminal Suspects' Silence," *Human Rights Law Review* 21, no. 3 (July 2021): 696–723, https://doi.org/10.1093/hrlr/ngab006.
[23] Melanie Sauerland and Miet Vanderhallen, "Remaining Silent During Investigative Interviews: A Perspective of Prisoners Convicted for a Serious Crime," *Psychology, Crime & Law* 32, no. 3 (March 2026): 479–97, https://doi.org/10.1080/1068316X.2024.2376242.

and detention) that the police should reasonably know could provoke a damaging response from the suspect.[24] Therefore, if a detained person is to undergo interrogation, they must be clearly and explicitly informed that they have the right to remain silent. Furthermore, the warning must be accompanied by an explanation that anything said can and will be used against the individual in court.[25] However, there was a case in the United States in 2022. The ruling in Vega v. Tekoh shows that Miranda rights are still not widely applied in practice. In this case, hospital worker Terence Tekoh was accused of sexual assault by a patient and questioned by the police without being informed of his rights. He was subsequently tried in a California court and found not guilty by a jury. Tekoh subsequently filed a lawsuit, arguing that his right against self-incrimination under the Fifth Amendment had been violated. The District Court rejected his claim, but the Court of Appeal overturned that decision. Ultimately, however, the U.S. Supreme Court held that a violation of Miranda does not automatically constitute a violation of the Fifth Amendment, and allowing such claims could place an additional burden on the judicial system.[26]

Under Dutch law, the right to remain silent can be exercised as soon as an individual is considered a suspect. Article 27 of the Dutch Code of Criminal Procedure (DCCP) states that 'An individual is considered a suspect when there is a reasonable suspicion that they are guilty of committing a criminal offense,[27] which can be inferred from facts or circumstances.' Additionally, the right to remain silent can only be invoked during interrogation. According to Dutch jurisprudence, any questions posed by investigative officers to an individual designated as a suspect regarding their involvement in a criminal offense constitute an interrogation. Although the right to remain silent is most relevant during the investigation stage, this right applies throughout the criminal process, including the trial. In fact, this right meets international legal standards.

According to ter Vrugt,[28] 'the right to silence can be derived from broader international norms such as the privilege against self-incrimination embedded in Article 14(3)(g) of the ICCPR, which many states have incorporated into domestic criminal procedure'. ter Vrugt explains that, in civil law countries like the Netherlands, the substance of the right to remain silent has been implemented in line with international obligations, without adopting the Miranda warning format. As she notes, Dutch law requires that suspects be informed of their right to silence prior to questioning. This demonstrates that the substantive protection against self-incrimination has transcended its American procedural origins to become a transnational customary norm.[29] This shows that Dutch law is influenced by the European Court of Human Rights (ECtHR) case law. The Dutch approach has also been influenced by ECtHR jurisprudence, particularly regarding fair trial guarantees and protection against self-incrimination. The ECtHR adjudicates on individual applications concerning alleged violations of rights set out in the European Convention on Human Rights, brought by

[24] Chris Blair, "Miranda and the Right to Silence in England," *Tulsa Journal of Comparative and International Law* 11, no. 1 (2003).
[25] Jalo Vatjus-Anttila, "A Conceptual Framework for Voluntary Confessions and the Privilege Against Self-Incrimination," *Criminal Law and Philosophy* 19, no. 1 (April 2025): 19–38, https://doi.org/10.1007/s11572-024-09727-6.
[26] Isabella Marias, "The Past, Present, and Future of Miranda Rights," George Washington University Pre-Law Student Association:The Justice Journal, 2024.
[27] Peggy ter Vrugt, "A Pragmatic Attitude: The Right to Silence in the Netherlands," *New Journal of European Criminal Law* 12, no. 3 (September 2021): 389–407, https://doi.org/10.1177/20322844211028312.
[28] ter Vrugt.
[29] Bull and Blandón-Gitlin, *The Routledge International Handbook of Legal and Investigative Psychology*.

individuals against a state party or parties, and on interstate applications brought by a state party against another state party. ECtHR case law requires that suspects are informed of their right to silence before questioning.' This demonstrates that the European Court of Human Rights was established in Strasbourg in 1959. The Dutch legal system, like most Continental European countries, directly incorporates the right to remain silent into its criminal procedure frameworks.

This contrasts with the United States, where the Miranda Rules operate as even-triggered procedural checks on police conduct through specific warnings at custodial interrogation. However, this distinction should not be understood as a rigid dichotomy: the United States combines procedural warnings with structural constitutional guarantees (the Fifth Amendment), while the Netherlands, in the Criminal Procedure Code (Wetboek van Strafvordering), states that suspects have the right to refuse to answer questions from the investigation stage. Additionally, judges are not allowed to consider silence as evidence of guilt. The right to remain silent is also a crucial part of the fair trial process, as outlined by Directive 2012/13/EU of the European Union.[30] Therefore, the European approach to protecting the right to remain silent is more structural than procedural, unlike the United States model, which is centered on Miranda warnings. Nevertheless, it remains effective in safeguarding the privilege against self-incrimination through institutional and judicial safeguards. For Indonesia, which shares the Netherlands' civil law tradition, this comparison suggests that effective protection requires a balanced combination of structural and procedural safeguards, rather than merely transplanting the Miranda doctrine or relying solely on limited procedural reform.

However, structural protection alone remains vulnerable to implementation failure. Sauerland interviewed prisoners in the Netherlands about their right to remain silent, particularly in relation to serious crimes, and wrote an article about it. Prisoners in the Netherlands remain silent because they do not want to speak out; they want to protect their relationships and families. Consequently, their strategy is to speak only about themselves, not about anything else. Interviewees in the Netherlands explained that the extent to which one might receive a lower sentence if one spoke was irrelevant. Similarly, two interviewees in the Netherlands indicated that a life of crime carries risks and consequences. So, although there are rules in the Netherlands regarding the right to remain silent, offenders do not yet fully understand this right.[31]

Miranda Rules can be understood as a constitutional model that affirms the principles of privilege against self-incrimination and due process of law, which are widely recognized in international legal systems. The right to remain silent is also rooted in the principle of respect for human dignity and protection against torture (freedom from coercion), as outlined in the Convention Against Torture. This principle is emphasized by Kassin et al. in the *Routledge Handbook*, stating that 'the right to remain silent is a global standard derived not from American law alone, but from the international human rights movement emphasizing

[30] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the Right to Information in Criminal Proceedings, EP, CONSIL, 142 OJ L (2012), http://data.europa.eu/eli/dir/2012/13/oj/eng.
[31] Sauerland and Vanderhallen, "Remaining Silent During Investigative Interviews: A Perspective of Prisoners Convicted for a Serious Crime."

voluntary confession and legal representation.[32] In a 2024 paper titled 'The Miranda Penalty: Inferring Guilt from Suspects' Silence", they looked at how a suspect's decision to stay silent can make people think they're more guilty. The study found that when exercising this right, suspects are often perceived as suspicious or guilty by observers, such as jurors or the general public. This phenomenon is referred to as the 'Miranda penalty'. The writers say that, in real life, the right to say nothing might stop people from being forced to say things they don't want to because it can make people biased. This can result in suspects who exercise this right facing implicit disadvantages during legal proceedings. This raises concerns about the fairness and actual effectiveness of Miranda protections within the criminal justice system.[33] The study's findings reveal the ineffectiveness of the right to remain silent in the implementation of regulations, both for suspects and defendants. The right to remain silent demonstrates its susceptibility to bias, as the silence of a suspect or defendant does not necessarily indicate guilt, nor does the opposite hold true.

In the Anglo-American legal system, the right to remain silent is an explicit and strong procedural right, as the system is adversarial: the prosecutor and defense counsel face off , while the defendant is under no obligation to assist the state in proving their guilt. This stems from the principle of privilege against self-incrimination ("*nemo tenetur se ipsum accusare*"). The right to remain silent is a strong constitutional right that applies from the investigative stage onward; consequently, a suspect must be informed, via the Miranda warning, that they have the right to remain silent and that any statements they make may be used as evidence in court. The implementation of this right is based on the principle of the privilege against self-incrimination, which means that a person cannot be compelled to provide testimony that incriminates themselves. Therefore, the defendant's silence must not be interpreted as an admission of guilt or used as evidence of guilt, and the prosecutor must not use that silence to influence the judge's or jury's assessment. Furthermore, under this system, the defendant is also under no obligation to assist the state in proving their guilt, as the burden of proof rests entirely with the prosecution, which must present independent evidence to substantiate its charges. Thus, the right to remain silent in the Anglo-American system is not merely the right to refuse to answer, but is part of the constitutional protection against self-incrimination and the right to a fair trial.[34]

In civil law systems, protection against self-incrimination exists, but historically it has not been established as an absolute right to remain silent as in common law. This is because the system is more inquisitorial in nature, meaning that judges and investigators actively seek the material truth, so that the defendant is traditionally viewed as an integral part of the fact-finding process. The right to remain silent is essentially recognized as part of the protection against self-incrimination, but its implementation is not as absolute as in the Anglo-American system. The primary focus is not on granting the right to remain silent as a strong constitutional privilege, but rather on the principle that the defendant must not be compelled

[32] Fabiana Alceste Saul M. Kassin, Kyle C. Scherr, "The Right to Remain Silent: Realities and Illusions," in *The Routledge International Handbook of Legal and Investigative Psychology* (England: Routledge, 2019).
[33] Megan L. Lawrence et al., "The Miranda Penalty: Inferring Guilt from Suspects' Silence.," *Law and Human Behavior* 48, no. 5–6 (October 2024): 368–84, https://doi.org/10.1037/lhb0000587.
[34] John H. Langbein, "The Historical Origins of the Privilege against Self-Incrimination at Common Law," *Michigan Law Review* 92, no. 5 (March 1994): 1047, https://doi.org/10.2307/1289628.

to confess or provide testimony that incriminates themselves. Because the Civil Law system tends to be inquisitorial, judges or investigators play an active role in seeking the material truth and may directly ask the defendant questions during the examination. In this context, while the defendant does have the right to remain silent, their role is more active in the evidentiary process than in the common law system. Furthermore, the right to remain silent in Civil Law generally stems from the principles of a fair trial and the prohibition against coercion, rather than as an absolute constitutional privilege; consequently, in practice, the defendant's silence is not always treated as "sterile" from evidentiary assessment, as is the case in the U.S. model.[35]

2. The Right to Remain Silent and the Burden of the Defendant's Testimony in the New Criminal Procedure Code and The Implications on the Evidentiary System in Criminal Procedure Law.

In international law and the practice of modern democratic countries, the right to remain silent is recognized as a fundamental right of the suspect/defendant that cannot be used as a basis for assigning guilt. The ICCPR, particularly Article 14(3)(g), provides that no one shall be compelled to confess guilt. However, under the New Criminal Procedure Code, this right is not explicitly guaranteed as a right that can be exercised by the defendant without negative consequences during the evidentiary phase. The principle of non-self-incrimination, which prohibits compelling an individual to provide testimony that may incriminate themselves, is closely related to the right to remain silent. According to Harahap,[36] in order to align with human rights principles, the position of the defendant as a legal subject under the New Code must be protected from any form of coercion. The right to remain silent is not explicitly outlined in the New Code as a constitutional right of the suspect/defendant. This raises a problem: a suspect/defendant is sometimes coerced into admitting to the alleged offense. Article 142 of the New Code outlines the rights of suspects/defendants, including the right to:

a. Promptly undergo examination;
b. Contact and receive legal counsel during any examination;
c. Receive legal assistance;
d. Be clearly informed, in a language they understand, of the charges or accusations against them;
e. Be informed of their rights;
f. Provide or refuse to provide testimony related to the charges or accusations against them;
g. Receive interpreter assistance at any time;
h. Receive legal services and assistance from one or more attorneys;
i. Contact, communicate with, and receive visits from their country's representative if they are a foreign national;
j. Designate a representative from a foreign country to be contacted;

[35] John D. Jackson and Sarah J. Summers, "Silence and the Privilege Against Self-Incrimination," in *The Internationalisation of Criminal Evidence* (Cambridge University Press, 2012), 241–84, https://doi.org/10.1017/CBO9781139093606.012.
[36] M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP*, II (Jakarta: Sinar Grafika, 2021).

k. Contact, communicate with, and receive visits from a doctor for health examinations;
l. Contact, communicate with, and receive visits from a chaplain;
m. Contact, communicate with, and receive visits from family members, relatives, or others directly or through the assistance of their legal counsel;
n. Send and receive correspondence from and to their attorney and family members;
o. Request the application of restorative justice mechanisms;
p. Seek and present witnesses and/or individuals with specialized expertise, and/or
q. File claims for compensation and rehabilitation.

The inclusion of Article 142 letter (f) marks an important paradigm shift in Indonesian criminal procedure. Historically, the Indonesian criminal justice system tended to emphasize confession-oriented investigations, a legacy of the inquisitorial tradition. By recognizing the right to refuse testimony, the New Code partially reorients the system toward a due-process model that prioritizes the protection of suspects' procedural rights. Nevertheless, this transformation remains incomplete because the New Code simultaneously preserves evidentiary provisions that continue to position the defendant's statement as an important evidentiary instrument. As a result, the recognition of the right to remain silent risks becoming merely symbolic rather than fully operational.

However, when the individual becomes a defendant, Article 225 of the New Code also states that 'If the defendant does not answer or refuses to answer questions posed to them, the presiding judge will encourage them to answer, after which the examination will continue. According to this provision, the defendant remains uncooperative if they remain silent, and the judge is given a normative instruction to 'encourage' the defendant to answer. This can create psychological and moral pressure, which contradicts the principle of non-self-incrimination. To understand the urgency of protecting the rights of the suspect/defendant in accordance with the principle of non-self-incrimination, a fundamental thought is needed to reach a unified understanding. On a doctrinal level, the right to remain silent and not provide self-incriminating testimony is based on the principle of the right to remain silent, which protects the defendant throughout the criminal process, including during interrogation, trial, and the reading of the verdict.[37] The right to remain silent protects the defendant only from coerced interrogation. Specifically, the right to non-self-incrimination is a privilege that protects not only information that could incriminate, but also evidence that may tend to incriminate the defendant and witnesses at all stages of investigation by law enforcement officers. Therefore, this privilege is highly individual.

This normative inconsistency reflects a deeper structural tension within the New Code. On one hand, Article 142 adopts the logic of the privilege against self-incrimination by recognizing the defendant's autonomy to remain silent. On the other hand, Articles 225 and 235 continue to maintain an inquisitorial orientation that requires active participation from the defendant during examination and evidentiary proceedings. Consequently, the Indonesian legal framework simultaneously recognizes and undermines the right to remain

[37] Zahri Kurniawan, Ilham Wahyudi, and H.S. Tisnanta, "The Right Non Self-Incrimination and Epistemology of Criminal Witnesses," *Fiat Justisia: Jurnal Ilmu Hukum* 14, no. 4 (July 2020): 363–80, https://doi.org/10.25041/fiatjustisia.v14n04.1988.

silent. This dualism creates uncertainty regarding whether silence constitutes a protected constitutional right or merely a procedural option subject to judicial pressure and adverse interpretation.

One of the purposes of this privilege is to promote the pursuit of truth. It increases the likelihood that confessions or other incriminating statements are made voluntarily, without coercion, which is necessary in the criminal justice process. The next goal is to prevent deviations from the criminal justice system; law enforcement officers are required to prove their case through their own efforts, not by forcing the suspect/defendant to cooperate with the government by compelling a confession or other incriminating statements.[38] This issue becomes crucial because suspects/defendants are often under psychological pressure and may even face physical pressure from law enforcement. In this context, the right to remain silent serves as a shield, protecting the defendant from the risk of providing testimony that could self-incriminate them involuntarily. Without clear regulations on the right to remain silent, there is a significant likelihood that human rights will be violated, and ultimately, confessions obtained under duress could still be used as valid evidence in court. The defendant's testimony as valid evidence is particularly critical in cases that require clear proof. However, from a contemporary perspective, it is emphasized that the protection of the defendant's testimony must be balanced with the assurance that the testimony is obtained directly, without pressure, interference, or suggestion. A defendant's confession cannot be considered valid evidence if obtained through coercion or threats. According to Hamzah,[39] a confession is valid only if it is given in an appropriate manner. Arief argues that a fair system of proof does not sufficiently support fundamental rights, even if the legal process itself is conducted properly. In other words, the existing system of proof does not regulate the crucial elements of legal system efficiency.[40]

As noted by Harahap, Indonesia's criminal justice system continues to rely on the defendant's testimony to validate evidence, which means that the defendant is essentially 'placed' as evidence against themselves if they refuse to answer.[41] Thus, the right to refuse applies only when a person is a suspect, and once they are a defendant, the judge encourages them to answer. Article 212 relates to 235 of the New Code, which deems the defendant's testimony as valid evidence. It can be seen that the defendant's silence is often considered an obstacle to the investigation and implicitly pressures the defendant to speak. The New Code seems to overlook the doctrine of non-self-incrimination, as silence can be interpreted as non-cooperation by the suspect/defendant. Muladi argues that the burden of proof lies with the prosecutor. Therefore, Article 235 of the New Code should be harmonized to ensure the protection of the right to remain silent in contemporary criminal procedure law, in line with the presumption of innocence and the right to remain silent, as outlined in international law.[42] All testimony from the defendant should be heard, whether it is a denial, a confession, or a partial confession of actions or circumstances. The defendant's testimony as evidence does

[38] William M. Carter, "The Second Founding and Self-Incrimination," *Northwestern University Law Review* 118, no. 4 (2024): 927–84.
[39] Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta Timur: Sinar Grafika, 2017).
[40] Barda Nawawi Arief, "Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan KUHP Baru," *Kencana, Jakarta*, 2008.
[41] M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP*.
[42] Muladi Muladi, *Hak Asasi Manusia, Politik Dan Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 2002).

not need to be the same or in the form of a confession. The judge is not required to take all of the defendant's testimony.[43] This is also related to the due process of law.[44]

The principle of due process guarantees that the right to life, liberty, and property shall not be deprived without fair legal procedures. In other words, the state must adhere to the rule of law in every action taken against its citizens,[45] 'to protect the individual from the arbitrary actions of government. According to the principle of due process of law, the defendant has the right not to be treated as an object of examination, but as a subject whose rights are protected.[46] Forcing the defendant to speak or interpreting silence as a sign of guilt would violate the constitutional protection of human rights. In a rule-of-law state (*Rechtsstaat*) and constitutional democracy, the principle of due process of law requires that every legal process carried out by judicial institutions must meet the elements of procedural fairness, protect individual rights, and ensure that everyone has a fair opportunity to be heard before a decision is made.[47] The right to remain silent for suspects/defendants is often overlooked in practice due to violations of principles and rules of criminal procedure. The principle of the right to remain silent in the Miranda Rules protects suspects, particularly from intimidation and physical and mental torture by investigators or prosecutors. Legal scholars still question the right to remain silent, thus a new article is needed in the New Code that explicitly regulates this right. Article 240 of the New Code states that:

a. The testimony of the defendant, as referred to in Article 235, paragraph (1), letter (d), is any statement made by the defendant in court regarding actions they have done, personally known, or personally experienced;
b. Testimony given by the defendant outside the courtroom may be used to assist in finding evidence in court, provided that the testimony is supported by valid evidence related to the charges against the defendant;
c. The defendant's testimony may only be used against the defendant themselves;
d. The defendant's testimony alone is insufficient to prove that the defendant is guilty of the alleged offense, and must be accompanied by other valid evidence.

From Article 240, it can be seen that in Indonesia, when a person becomes a defendant, the country does not fully adhere to the Miranda Rules as applied in countries such as the United States or the Netherlands. While the defendant's testimony can only be used against themselves and must be supported by other valid evidence, there is no full right to remain silent. Article 226 actually shows that the defendant's testimony serves as supplementary evidence, which should not have been included in Article 235, which states that the defendant's testimony is valid evidence, as this implies that the defendant's testimony is still considered important in the evidentiary system.

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[43] Alexander Lundberg and Murat Mungan, "The Effect of Evidentiary Rules on Conviction Rates," *Journal of Economic Behavior & Organization* 203 (November 2022): 563–76, https://doi.org/10.1016/j.jebo.2022.09.026.
[44] Khairuddin Hasibuan, Budi Sastra Panjaitan, and Arifuddin Muda Harahap, "RUU KUHAP: Tantangan Dan Harmonisasi Antara Asas Due Process of Law Dan Criminal Justice System Di Indonesia," *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 3, no. 2 (July 2024): 57–72, https://doi.org/10.55606/jurrish.v3i2.6023.
[45] The Editors of Encyclopaedia Britannica, "Fourteenth Amendment United States Constitution | Definition, Summary, Rights, Significance, & Facts," 2026.
[46] Muladi, *Hak Asasi Manusia, Politik Dan Sistem Peradilan Pidana*.
[47] Ayu Wulandari and Sidi Ahyar Wiraguna, "Problematika Penerapan Prinsip Due Process of Law Dalam Hukum Acara Pengujian Undang-Undang Di Mahkamah Konstitusi," *Politika Progresif: Jurnal Hukum, Politik Dan Humaniora* 2, no. 2 (May 2025): 52–63, https://doi.org/10.62383/progres.v2i2.1613.

In applying criminal procedural law, law enforcement officers are required to adhere to the provisions, as criminal procedure law not only serves as a source of power but also involves the protection of human rights.[48] A fair trial is a fundamental human rights principle reflecting justice in society and preventing innocent individuals from being wrongly entrapped and punished in the criminal justice system. Without the implementation of justice in the judiciary, both the law and public trust in the legal system will collapse.[49] Following the enactment of the New Code,[50] various human rights instruments have been adopted and become an integral part of the national legal system, including the United Nations Convention Against Corruption, the International Convention Against Torture, and the International Covenant on Civil and Political Rights. In the current criminal justice process, the goal is to view citizens who are suspects/defendants not as 'objects,' but as 'subjects' with rights and obligations under applicable laws and provisions.

To improve the quality of law in Indonesia, the government is working to reform the criminal procedure law through the New Code. Scholarly studies indicate that reforms in criminal procedure law reflect a broader shift in legal paradigms, particularly from a crime-control model toward a due process model that emphasizes the protection of fundamental rights and fair trial guarantees.[51] With the reform of the New Code, justice system is expected to better align with contemporary developments,[52] particularly regarding the right to remain silent, which can be adapted to the principles of the ICCPR. Evidence presentation is a legal effort to clarify the legal standing of the parties submitting evidence. Through evidence presentation, the judge can draw conclusions about the truth or falsehood of the parties involved. The most important element is proving whether the suspect/defendant actually committed the alleged act.[53] Human rights are at stake here because the purpose of criminal procedure law is to uncover the material truth.

In Indonesia's criminal procedure, the right to remain silent places the burden of proof on prosecutors, protects defendants from coercion, and prevents convictions based solely on confession. The silence of the defendant or suspect should not be construed as an admission of guilt. According to Article 8(1) of the Judicial Authority Law of 2009, any individual who is suspected, arrested, detained, prosecuted, and/or brought before a court must be presumed innocent until proven guilty by a final, legally binding court decision. Therefore, the right to remain silent reinforces the position of the defendant or suspect, ensuring fair treatment and emphasizing the principle of "presumption of innocence," which holds that an individual is presumed innocent until a final court ruling is issued. This principle protects individual rights. All decisions regarding an individual's culpability must be based on sufficient and valid evidence presented during the trial, thereby safeguarding individuals from unjust prosecution

[48] Kurniawan, Wahyudi, and Tisnanta, "The Right Non Self-Incrimination and Epistemology of Criminal Witnesses."
[49] Yudha Prawira, "Reconceptualizing Justice: Utilizing the Fair Trial Principle As A Standard For A State's Criminal Justice Systems," *Jus Comparatum: Jurnal Of Law Studies* 1, no. 2 (2025): 21–38, https://doi.org/https://doi.org/10.35586/icjls.v1i2.12026; Siti Anisah and Sahid Hadi, "The Human Right to a Fair Trial in Competition Law Enforcement Procedures: A Rising Issue in Indonesian Experiences," *Laws* 12, no. 3 (June 2023): 55, https://doi.org/10.3390/laws12030055.
[50] Institute for Criminal Justice Reform (ICJR), "Penerapan Prinsip Yang Adil Dalam Sistem Peradilan Pidana," 2018.
[51] Javier Escobar Veas, "The Criminal Trial as an Instance of Impure, Imperfect Procedural Justice and the Procedural Rights of the Guilty," *Criminal Law and Philosophy*, December 2025, https://doi.org/10.1007/s11572-025-09786-3.
[52] Rio Saputra, Lufsiana Lufsiana, and Dharma Setiawan Negara, *Reformasi Hukum Acara Pidana: Menyongsong KUHAP Baru* (Tasikmalaya: Langgam Pustaka, 2025).
[53] Linda Ayu Pralampita, "Kedudukan Amicus Curiae Dalam Sistem Peradilan Di Indonesia," *Jurnal Lex Renaissance* 5, no. 3 (July 2020), https://doi.org/10.20885/JLR.vol5.iss3.art4.

and punishment. Moreover, an important implication of this right is the strengthening of the legal position of the suspect or defendant before the state. The right to remain silent provides the suspect with the opportunity to avoid self-incrimination. Since the defendant is not compelled to answer questions that may jeopardize their position, this facilitates the defense counsel's strategy. Thus, the right to remain silent ensures a balance between the state's prosecutorial powers and the individual's right to self-defense.

The prohibition against compelling an individual to incriminate themselves, or the principle of non-self-incrimination, is an essential implication of the right to remain silent. If this right is disregarded, there is a risk that the defendant may be coerced into providing testimony through intimidation or torture, which clearly violates the principle of due process of law. According to the Constitutional Court's Decision No. 65/PUU-VIII/2010, filed by Mahendra, who at the time was the petitioner, the Court issued a ruling in the case regarding the petition Review of Law No. 8 of 1981 on Criminal Procedure Code against the 1945 Constitution of the Republic of Indonesia, Constitutional Court Decision No. 65/PUU-VIII/2010 is indeed not a decision regarding the right to remain silent, but rather regarding the defendant's right to defend themselves through broader evidence, specifically by expanding the definition of a witness so that the defendant may call relevant witnesses even if they did not personally see, hear, or experience the events in question. However, when viewed conceptually, this decision relates to the right to a fair trial and the principle of equality of arms, the idea that a defendant should not be compelled to prove their innocence solely through their own testimony. In this context, there is an indirect connection to the right to remain silent: if the defendant chooses to remain silent or refuses to provide self-incriminating testimony, they must still have the opportunity to defend themselves through other means of evidence, including a broader range of witnesses as permitted by Constitutional Court Decision No. 65/PUU-VIII/2010. The principle of a fair trial must ensure the fundamental rights of the suspect and defendant, including the right not to be forced to provide self-incriminating statements. Therefore, any statements obtained through coercion or torture cannot be used as evidence in court. The affirmation of the right to remain silent serves as a safeguard against torture, especially for those still under suspicion. During detention, the likelihood of violence and torture is high, both from fellow detainees and law enforcement officers within detention facilities.[54] Additionally, the right to remain silent prevents torture and the fabrication of cases. As such, confessions obtained under duress must be inadmissible as valid evidence, thus preserving the integrity of the criminal justice system and reducing the occurrence of biased and non-objective investigative practices.

Criminal justice practice in Indonesia shows that protection of the right to remain silent is not yet fully optimized within the framework of the New Code. Before the enactment of the Old Criminal Procedure Code in 1981, the provisions of the *(Herziene Indonesisch Reglement – HIR)* were still in effect. Sengkon and Karta were two farmers convicted of robbery and murder in 1974. The two farmers were accused of murdering the couple, Sulaiman and Siti Haya, in November 1974. The problem was that they were forced to confess to the crime. Three years later, based on the 1977 ruling of the Bekasi District Court, Sengkon was sentenced to 12

[54] Institute for Criminal Justice Reform (ICJR), "Penerapan Prinsip Yang Adil Dalam Sistem Peradilan Pidana."

years in prison, while Karta was sentenced to 7 years in prison. However, while they were serving their sentences, the actual killers of Sulaiman and Siti Haya suddenly confessed to the crime. This can be seen in cases that are often cited as classic examples of a miscarriage of justice, where confessions were obtained through coercion during the interrogation process. Even after 1981, the problem of violence and coercion against criminal suspects persisted, particularly by the police during investigations; in fact, in 2025, a massive demonstration took place, and the police forcibly dispersed the crowd because it had become uncontrollable. However, the dispersal resulted in the deaths of people who were struck and run over by police cars, even though it was not certain that they were at fault. It later discovered that he was an online driver passing by, not the one causing the chaos. Even if he had been at fault, it was not appropriate to run him over until he died, as this constitutes a severe violation of human rights.[55] From a criminal procedure perspective, such conditions clearly contravene the principle prohibiting the coercion of confessions and the suspect's right to provide statements freely, as stipulated in Article 52 of the New Code. Furthermore, practices at the investigation stage continue to treat a suspect's silence as a form of non-cooperation, which may ultimately affect the suspect's position in the evidentiary process. This indicates that the right to remain silent has not yet been explicitly institutionalized within the Indonesian legal system, unlike practices in some other countries.[56]

A similar phenomenon was also observed in the Wongso case. Back in 2016, Indonesia was rocked by a murder case involving cyanide-laced coffee, with the victim identified as Salihin.[57] During the trial, many journalists flocked to the courtroom to cover the case. During the trial, several irregularities were highlighted by the public; many noted that Wongso appeared too calm. Additionally, she repeatedly answered "I don't remember" and "I don't know" when questioned by the prosecutor.[58] In this case, the defendant's tendency not to actively provide statements was often perceived negatively both in the public sphere and within the dynamics of the trial. Normatively, this situation highlights a tension between the right against self-incrimination and the evidentiary system under Article 184 the New Code, which still recognizes the defendant's statement as valid evidence. Yet, under international standards such as the International Covenant on Civil and Political Rights, specifically Article 14(3)(g), everyone has the right not to be compelled to testify against themselves. Thus, existing practices and regulations reveal a lack of alignment between the principles of human rights protection and the system of evidence in Indonesian criminal procedure law.[59]

To ensure full protection of the right to remain silent, the New Code must be interpreted progressively so that silence is not treated as an admission of guilt, while suspects and defendants remain free from the burden of proving innocence. This right serves as an essential safeguard to balance state power and human rights in criminal proceedings. However, the main issue lies not only in the absence of Miranda-style warnings but in the coexistence of

[55] Tim Redaksi, "Mobil Brimob Lindas Pengemudi Ojol Saat Bubarkan Aksi Di Pejompongan, Massa Mengamuk," Tanggerang News, 2025.
[56] Verelladevanka Adryamarthanino and Tri Indriawati, "Sengkon Dan Karta, Dua Petani Yang Dituduh Merampok Dan Membunuh," Kompas, 2023.
[57] Saniyyah Defarianty, "Circumstantial Evidence Dalam Ice Cold: Murder, Coffee, and Jessica Wongso, Ada Apa Dengan Peradilan Sianida?," LK2 FHUI, 2023.
[58] Dian Nita, "Jejak Kasus Kopi Sianida (IV): Panasnya Persidangan, Alotnya Pembuktian Jessica Wongso," Kompas TV, 2023.
[59] Erwin Susilo et al., "Access to Justice: An Effective Pretrial Model to Guarantee the Right to Defense for Suspects in Indonesia," *Jurnal Hukum Dan Peradilan* 14, no. 2 (July 2025): 317–50, https://doi.org/10.25216/jhp.14.2.2025.317-350.

contradictory procedural paradigms. Although the Code recognizes silence as a due process right, it retains inquisitorial evidentiary mechanisms, making protection against self-incrimination fragile and risking that silence becomes merely symbolic rather than an effective constitutional safeguard.

Conclusion

The research concludes that, while the right to remain silent is a globally recognized human right, its implementation varies significantly depending on the underlying legal tradition. In Anglo-American systems, particularly the United States, the right to remain silent is an explicit and robust procedural right rooted in the adversarial nature of the court. Supported by the Miranda Rules, this system mandates that suspects be clearly informed of their rights, ensuring that silence is treated as "sterile" from evidentiary assessment and cannot be used to infer guilt. In contrast, Civil Law systems like the Netherlands historically lean toward an inquisitorial approach, in which judges and investigators actively seek the material truth. Although the Netherlands has incorporated the right to remain silent into Article 27 of the Dutch Code of Criminal Procedure (DCCP) due to international and EU obligations, the defendant is traditionally viewed as an integral part of the fact-finding process, making the implementation of this right less absolute than in the U.S. model. In Indonesia, the enactment of the New Criminal Procedure Code marks a shift toward a due-process model that emphasizes the protection of human dignity and fair trial guarantees. Implementation of the right to remain silent is normatively recognized under Article 142 letter (f), which explicitly grants suspects and defendants the choice to either provide or refuse to testify regarding the charges against them. This provision reflects Indonesia's commitment to international standards, specifically the ICCPR, which prohibits compelling anyone to confess guilt.

However, in practice, the Indonesian legal system still struggles to balance this right with an evidentiary framework that has traditionally placed immense weight on the defendant's testimony. This study identifies critical shortcomings in the regulation of the right to remain silent under the New Criminal Procedure Code. A normative conflict between Articles 142 and 235 creates legal uncertainty by protecting silence while still treating the defendant’s statement as evidence. Article 225 also pressures silent defendants to answer, thereby undermining the right to remain silent. Unlike the Miranda doctrine, no mandatory warning exists at arrest. Consequently, silence may be misinterpreted, threatening the presumption of innocence and requiring harmonization with human rights standards.

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