

May 2023

INNOCENT UNTIL PRESENTED

Aristo Pangaribuan

Faculty of Law, University of Indonesia, aristo.pangaribuan@gmail.com

Follow this and additional works at: <https://scholarhub.ui.ac.id/jhp>



Part of the [Administrative Law Commons](#), [Comparative and Foreign Law Commons](#), [Constitutional Law Commons](#), [Criminal Law Commons](#), and the [Natural Resources Law Commons](#)

Recommended Citation

Pangaribuan, Aristo (2023) "INNOCENT UNTIL PRESENTED," *Jurnal Hukum & Pembangunan*: Vol. 50: No. 2, Article 5.

Available at: <https://scholarhub.ui.ac.id/jhp/vol50/iss2/5>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in *Jurnal Hukum & Pembangunan* by an authorized editor of UI Scholars Hub.

INNOCENT UNTIL PRESENTED

Aristo Pangaribuan*

* Dosen Tetap Fakultas Hukum Universitas Indonesia
Korespondensi: aristo.pangaribuan@gmail.com
Naskah dikirim: 2 April 2020
Naskah diterima untuk diterbitkan: 1 Juli 2020

Abstract

This paper analyzes a practice of presenting suspects, which is a ritual that displays a suspect before the media. Until now, although it is frequently used by the police, there has been no attempt to examine such practices in Indonesia. In the criminal procedure scholarship, there is no standard term to describe it. This article will refer to such ritual as a presentation of suspects. This ritual has also been practiced around the world with different methods and has a long history, especially in the United States. This article discusses the presentation of suspects and question whether such a ritual is a violation of the fundamental rights of being presumed innocent until found guilty. Two issues will be examined to answer this question: The purported objectives for the practice and the accused's right to be presumed innocent. The term innocence here is a presumptively innocent and not factually innocent. With that in mind, to some degree, this article realizes it would be permissible to deprive their liberty if it has a higher purpose.

Keywords: Indonesia, criminal justice, Investigation, staged Perp walk, Presentation of suspects, Presumption of Innocence

Abstrak

Tulisan ini membahas mengenai praktik presentasi tersangka, yaitu ritual konferensi pers dengan hadirnya tersangka. Praktik ini sering dipakai untuk kasus-kasus yang menarik perhatian publik. Sampai sekarang, walaupun presentasi tersangka digunakan oleh para penegak hukum, belum ada pembahasan khusus mengenai praktik tersebut. Di dalam diskursus hukum acara pidana, belum ada terminologi baku untuk menyebut ritual tersebut. Tulisan ini secara khusus akan menyebutnya sebagai praktik presentasi tersangka. Ritual presentasi tersangka lazim digunakan di berbagai negara, dan sudah banyak diperdebatkan, khususnya di Amerika Serikat. Tulisan ini akan membahas ritual presentasi tersangka dan mempertanyakan apakah ritual tersebut melanggar hak dasar tersangka, yakni hak untuk dianggap tidak bersalah sebelum ada putusan pengadilan (praduga tidak bersalah). Dua isu utama akan menjadi pokok bahasan dalam menjawab pertanyaan tersebut, tujuan dari presentasi tersangka dan asas praduga tidak bersalah. Dengan landasan berpikir tersebut, tulisan ini menyadari bahwa dalam kasus-kasus tertentu, presentasi tersangka mungkin dapat dijustifikasi untuk mencapai tujuan-tujuan penegakan hukum yang lebih tinggi. Tulisan ini berargumen bahwa apabila ritual presentasi tersangka digunakan untuk kasus consensual gay sex dan prostitusi, akan memberikan efek hukuman dan degradasi terhadap tersangka sebelum waktunya.

Kata Kunci: Indonesia, Penyidikan Pidana, Presentasi Tersangka, Tersangka dan Media, Praduga tidak bersalah.

I. INTRODUCTION

As the bedrock of the modern criminal justice system, the presumption of innocence principle (I will refer to it as “principle”) supposed to be applied consistently in every step of the criminal justice administration. In a general sense, one could easily define that law enforcement officials should not start with the preconceived idea that one has committed the offense charged. As such, the prosecutor has the burden of proof, and the accused has the benefit of the doubt. However, translating it into practice is not as easy as defining it. The goal of this article is to discuss the ritual practiced by the Indonesian National Police. This article will highlight the ritual related to the practice of presenting a suspect before the public and the media after making an arrest. Let me illustrate the practice: the suspected perpetrator of a crime, while wearing detainee costume and being handcuffed, after being arrested, is showed in front of the media for a press conference so she can be questioned and photographed by the press. As yet, there is no standard term to describe the display of a criminal suspect before the media in the Indonesian justice system; therefore, for the sake of establishing a common understanding, this article will refer to such ritual as a presentation of suspects.

In Indonesia, the operational understanding held by the legal authorities is that the paramount embodiment of the principle is about the burden of proof. Such understanding based on the Indonesian Criminal Procedural Law (*“Kitab Undang-Undang Hukum Acara Pidana or as written under article 66 of the KUHAP”*), which explicitly explains the paramount implementation of the presumption of innocence principle. Article 66 sanctions that the suspect or an accused should not bear the burden of proof. The principle further explains in the elucidation paragraph 3c of KUHAP, which stated that any person accused, arrested, detained, prosecuted, or brought before a court of law fall under the presumption of innocent until found guilty by final and binding judgment. The police guidelines say that the implementation of the principle is deemed to be complete because legal authorities will not reveal the suspect’s full name, and apart from that, the police will provide a mask to cover the suspect’s face during the presentation.¹

This article argues that the principle cannot be practiced by only giving them the possibility to hide their faces. It is because the essence of the principle is to protect the accused from pre-conviction punishment, and the real question is about to balance the accused’s fundamental right to be presumed innocent against the governmental purposes underlying the practice. In 2017, Indonesian police officers paraded the suspects of consensual gay sex in Jakarta in front of the media and interrogated them.² In 2019, the police did the same strategy in revealing the case of prostitution involving Indonesian actress, *Vanessa Angel*. The Indonesian Police arrested her in 2019 for her suspected involvement in online prostitution. After her arrest, authorities presented her and her intermediary (pimp) to the public. Since then, she has become the subject of endless salacious stories in mainstream and social media.³ Observing such events, I

¹ I am indebted to Indonesian Police Senior Commissioner *Sulistiandriatmoko* and Police Commissioner *Manapar* for the national police standard operating procedure document on press release. The document is not available online. Files on author

² The video of the presentation is available on Youtube. For more information see (41) 8 Orang Ditangkap Karena Pesta Gay di Surabaya NET24 - YouTube, <https://www.youtube.com/watch?v=TD5XgE7Gp0I> (last visited May 13, 2019).

³ The video of the presentation is available on Youtube. For more information see (40) Vanessa Angel Jadi Tersangka, Ini Penjelasan Polda Jawa Timur - YouTube, <https://www.youtube.com/watch?v=h5wTt3Bgd70> (last visited May 12, 2019).

feel invited to then contemplate what crime the arrestee committed to deserve such ignominious treatment? Is the cost of shaming them fit the crimes?

This is the real example of conflicting values between individual criminal procedure rights and the collective interest of the society as defined by the state. This approach assumes that any limitation of a criminal procedure right can be justified if the conflicting community interest is sufficiently strong. It begs the question on the balance between the seriousness of the crimes and the need to protect the society from such crimes. This article argues that the treatment must be reserved for a particular type of crime based on its seriousness level and must serve legitimate purposes because the ritual itself is an instrument of power⁴ to achieve specific ends. The most cited reason to justify the treatment is to deter the crime and informing the public that justice is served at the cost of humiliating the suspect. This cost is even more expensive in the era of advanced social media.⁵ The unlimited distribution of information to the public distorts public perception and the facts about the crime. Improvement in treatment is available. In this internet era, free distribution of the video and the picture of the suspect wearing detainee costume and handcuff through social media is unavoidable. Consequently, it would create room for influential nature in the form of media images, internet memes, news stories, online polls and other pop-cultural symbols of crime to form public opinion and shape punitive criminal justice policies towards the suspect.⁶ This article argues that it is one thing to decide within the privacy of one's mind that a man is guilty, and it is another thing to use the system to influence people about guilt and innocence. In the pre-trial stage, the evidence is not yet tested.⁷ During a presentation, journalists can freely take pictures and question the suspect while usually suspects struggle to cover their faces. In contrast, the suspect of white-collar crimes in Indonesia does not receive such treatment, and they can sit adequately dressed in the courtroom, usually without physical restraints and with their lawyer nearby.

In order to answer the questions presented, this paper will begin with the conceptual definition of the presumption of innocence principle, which sets forth various concepts underlying this principle. This section of the article will elaborate several notable notions of the presumption which substantial in corroborating the principle today. After that, this article will use the 2017 raid of gay sex party and 2019 prostitution as cases study. The discussion on the nature of crimes of consensual gay sex and online prostitution will help assess the seriousness of the crimes to the Indonesian legal culture. Later, this article will briefly highlight how the current principle applies in other countries. After that, we will have a complete understanding of the principle that can serve as a footing for observing the issues. This article will also provide some brief comparison of the practice of the principle in the United

⁴ Nick Couldry, *Media rituals: a critical approach* (2005), <http://public.eblib.com/choice/publicfullrecord.aspx?p=237348> (last visited May 6, 2019).

⁵ Social media refers to the use of web-based and mobile technologies to turn communication into an interactive dialogue or a group of Internet-based applications that build on the ideological and technological foundations of that allow the creation and exchange of user-generated content. For a more detailed analysis see Kaplan and Haenlein, "Users of the World, Unite! The Challenges and Opportunities of Social Media," *Business Horizons* 53.1 (2010): 59–68. Cited from Eric Moore Dunning, *From Courtroom to Chatroom*. Dissertation in in the Graduate School of the University of Alabama (2012). P2

⁶ Richard Tewksbury, Alexis Miller & Matthew T. DeMichele (2006) *From the Field: CRIME, MEDIA, AND PUBLIC OPINION: CRIMINOLOGISTS' ROLE AS SOURCE OF PUBLIC INFORMATION*, *Journal of Crime and Justice*, 29:1, 123-142. P124

⁷ Nasr Pierce et al., *Tariq Ramadan, Islam, and the Presumption of Innocence* HuffPost (400AD), https://www.huffpost.com/entry/tariq-ramadan-islam-and-the-presumption-of-innocence_b_59f215f7e4b06ae9067ab704 (last visited May 17, 2019).

States. I choose U.S jurisdiction because shaming ritual has its roots in American history, and still practiced until now in the form of staged [perp]etrator walk.⁸ In the U.S, perp walks have been declared constitutionally acceptable, and the court has employed a balancing the interest between the public's desire to know and the rights of the accused.⁹

II. PRESUMPTION OF INNOCENCE AND ITS APPLICATION: LOCAL AND GLOBAL CONTEXT

In Indonesia, the presumption of innocence principle had existed in the constitution since it was in the form of a federal state in 1949. The 1949 Federal Constitution of the United States of Indonesia, in its article 14 par (1), stated that¹⁰:

“any person charged with committing a criminal offense shall be deemed innocent until proven guilty in a court hearing, by the applicable law, and he is given in the hearing of any guarantees which have been determined and necessary for defense.”

The same provision also stated in the draft of Indonesia's Provisional Constitution of 1950. In the Indonesian criminal justice scholarship, this era was considered a “golden era” of human rights in Indonesia.¹¹ In this era, several procedural rights are integrated into the Indonesian constitution. Universal Declarations of Human Rights inspired these two preceding constitutions, which established in 1948. In the era of “guided democracy” (1959-1965), Indonesia arguably plunges itself into the authoritarian system of justice.¹² Not surprisingly, the rules on the individual right were abolished. As a result, such articles are no longer exist in the current constitution.

However, similar guarantees are found in at least four lower legislations such as Indonesian Criminal Procedural Law (“KUHAP”), Judiciary Power Law (“*Kekuasaan Kehakiman*”), Human Rights Law (“HAM”), the International Covenant on Civil and Political Rights (“ICCPR”) which was ratified by Indonesia in 2005, and the 1999 Press Law. All of those legislations impose the same definition of the principle as the 1949 constitution. The more specific description of the principle exists in the 2009 National Police Chief Regulation (“*Peraturan Kapolri*”) on the Implementation of Human Rights Principle. In the article 35 of the regulation it describes the presumption of innocence in a more detailed way¹³:

⁸ Mary Angela Bock, *Framing the Accused: The Perp Walk as Media Ritual*, 22 *Vis. Commun. Q.* 206–220 (2015).

⁹ Shanna R. Van Slyke, Michael L. Benson & William M. Virkler, *Confidence in the Police, Due Process, and Perp Walks*, 17 *Criminol. Public Policy* 605–634 (2018).

¹⁰ Translation provided by the author. The original text is in Indonesian

¹¹ Daniel S. Lev, *Colonial Law and the Genesis of the Indonesian State*, *INDONESIA* 57–74 (1985); Fachrizal Afandi, *The Justice System Postman: The Indonesian Prosecution Service at Work*, in *THE POLITICS OF COURT REFORM: JUDICIAL CHANGE AND LEGAL CULTURE IN INDONESIA* 86–106 (Melissa Crouch ed., 2019), <https://www.cambridge.org/core/books/politics-of-court-reform/justice-system-postman/D29754C8EC29153F4C715108F8AD6F18>.

¹² Daniel S. Lev, *Judicial Authority and the Struggle for an Indonesian Rechtsstaat*, 13 *LAW SOC. REV.* 37–71 (1978); S. POMPE, *THE INDONESIAN SUPREME COURT: A STUDY OF INSTITUTIONAL COLLAPSE* (2005).

¹³ The translation is provided by the author. The original text is in Indonesian

- (1) *any person charged with committing a criminal offense shall be deemed innocent until proven guilty in a court hearing, by the applicable law, and he is given in the hearing of any guarantees which have been determined and necessary for defense¹⁴*
- (2) *Every member of the National Police has an obligation to follow the presumption of innocence with the understanding as follows:*
 - a) *the assessment of guilt or innocence, can only be decided by the court, through a fair proceeding in which any guarantees for the defense is already given to the accused*
 - b) *the right to be presumed innocent until found guilty is a fundamental right that is necessary to guarantee a fair trial*
- (3) *Every member of the National Police must apply the presumption of innocence principle during the process of investigation by treating anyone who has been arrested or detained, or someone who has not been detained as an innocent person*

Furthermore, the Public Relations Division of the Indonesian National Police has established a Standard Operating Procedure (“SOP”) on the press release. The content of the press release includes the ritual of displaying suspects before the media. The first step is deciding which case gets such treatment. According to the regulation, the practice is not reserved only for a particular type of crime. It is the discretion of the police to decide which cases they are going to reveal to the public. The press release draft only broadcast the suspect’s initials to the public. The police will invite the media to capture the event after the completion of the first draft. During the event, the suspect must be given a face mask to cover their face. The regulation clearly says that the concrete implementation of the principle is giving a face mask to the suspect. The police argue that if the suspect’s identity is hidden, the principle is not at risk. However, the act of not revealing the identity of the accused would be to no avail if such a presentation happened to high profile suspects.

Many (if not most) of the presentation display high profile suspect; otherwise, it would not attract the press to capture the event. There is no point in hiding their identity since the public has already known who is behind the mask. Many times, the press already knows the full name of the suspect and making them available right away in the news. Most high profile suspects in Indonesia even were presented without the mask, and the press could have a clear shot of their faces.¹⁵ There is no universal agreement on the operational application of this principle, let alone the limitation. There is no clear standard on what type of crimes that could justify the use of this technique. There is also no procedural safeguard for the defendant. Often, the suspects have no other option other than following police’s recommendations to display themselves in front of the media. They are simply throwing themselves at the mercy of the police.

One possible explanation is because the principle itself is not self-defined, and maybe it is designed that way so that it can give a legal apparatus a leeway to impose

¹⁴The wording of paragraph 1 of this regulation is similar to the definition given by 1949 Constitution.

¹⁵For instance, the presentation of Indonesian actor *Fahri Albar* in 2017 drug abuse case. He did not hide his face since the media has already following the news of his arrest.

its interpretation of the principle. This article aware that the problem in defining the operability of the principle is not the issue exclusively to Indonesia.¹⁶

There is a common belief among legal authorities in Indonesia that the principle is deemed to be satisfied by releasing the accused from evidentiary obligations.¹⁷ This article challenges such belief because just by reading the text of the regulation, the application of the principle should be extended in every stage of the criminal process. In paragraph 3 of *Peraturan Kapolri*, it imposes an obligation to the police apparatus to apply the principle during the investigation stage. One thing for sure, that the key to understanding the application of the principle is by seeing it as a practical attitude. Practical attitude means a mindset that determines the conduct on how to treat the accused in the criminal justice system. In this age of online media, the principal protagonists should adopt the practical attitude in the justice system for the duration of the criminal process, not only at the trial level.¹⁸ The principles itself has a universal recognition around the world, as a fundamental principle of procedural fairness in criminal law as mandated by article (2) b of *Peraturan Kapolri*. In giving the treatment, the legal enforcers must realize what it takes to implement the principle. One of the realizations is to understand the principle to protect the accused from the wrongful conviction. It is a necessary safeguard for the accused to prevent abuse of power from the state.¹⁹ Such protection includes the right of a suspect not to be punished before being tried and convicted as mandated by paragraph (2) of *Peraturan Kapolri*. Again, the problem is how we should translate it into operational reality? One might need to observe the debate in the global context as a tool for analysis in answering the question.

In the criminal procedure scholarship, *Keijzer* argues that a deep understanding of the presumption of innocence principle requires an essential understanding of its historical background first.²⁰ This principle dates back to the Babylonian times, as written in The Code of Hammurabi²¹ and the twelfth century, when jurists of *Ius Commune* established *ordo iudicarius*, which based on the Roman Law, as the common law in Europe.²² In the Common Law system, the recognition of this principle exists since the 11th century, especially in England, which later embodied in the 1689 Bill of Rights. In the Common Law system, this very principle is the main criterion in determining whether the judicial procedure is fair, honest, and impartial

¹⁶ Bill Wringer, *Perp Walks as Punishment*, in AN EXPRESSIVE THEORY OF PUNISHMENT 91–110 (Bill Wringer ed., 2016), https://doi.org/10.1057/9781137357120_5 (last visited Apr 1, 2020); Sarah Esther Lageson, *The Politics of Public Punishment*, 17 CRIMINOL. PUBLIC POLICY 635–642 (2018).

¹⁷This belief is based on article 66 KUHAP which states that the defendant is released from the burden of proof as an implementation of the presumption of innocence principle.

¹⁸I share the view of Pamela Ferguson in her article that the principle application must be extended. See Pamela R. Ferguson, *The Presumption of Innocence and its Role in the Criminal Process*, 27 Crim. Law Forum 131–158 (2016). p135

¹⁹ Kyle J. Kaiser, *Twenty-First Century Stocks and Pillory: Perp Walks as Pretrial Punishment Note*, 88 Iowa Law Rev. 1205–1242 (2002). p1217

²⁰ Ferry de Jong & Leonie van Lent, *The Presumption of Innocence as a Counterfactual Principle*, 12 Utrecht Law Rev. 32 (2016). p39

²¹Article 3 of Hammurabi's Code stated that "If any one bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offense charged, be put to death" "The Code of Hammurabi" Translated by L. W. King [1915], see Andrew Stumer, *The Presumption of Innocence: Evidential and Human Rights Perspectives* (Hart:2010), 1.

²²To ensure the acceptance of the radical change of criminal procedural law in Europe, *Ius Commune* placed *ordo iudicarius*' origin from the Old Testament and ingeniously traced the origins of the *ordo* to God's judgment of Adam and Eve in paradise. By doing so, they created a powerful myth justifying the *ordo* that retained its explanatory force until the seventeenth century, see Kenneth Pennington, *Innocent Until Proven Guilty: The Origins of a Legal Maxim*, 63 JURIST: STUD. CHURCH L. MINISTRY 106 (2003).

fashion. *Viscount Sankey LC* authoritatively declared in the case of English Law, in *Woolmington v Director of Public Prosecutions (DPP)*:

*Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt... if at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given... the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.*²³

Sankey's remarks on *Woolmington v DPP* case famously referred to as the "golden thread" in the criminal law and has been cited numerous, whether on academic writings or court documents, specifically in common law countries. Under *Woolmington's* conception of the presumption of innocence, an accused may opt to say or do nothing at all until the prosecution has produced sufficient evidence to establish a case against him. There is no reversal of proof, presumptions of fact, removal of privileges, or inferences operating against him as entertained under the purist, *Woolmington* conception, of the presumption of innocence.²⁴ Later on, in 1948, the United Nations incorporated the principle in its Universal Declaration of Human Rights under article 11, section 1. It also stipulated in other international and regional human rights instruments, such as the European Convention for the Protection of Human Rights in its Article 6, Section 2, and International Covenant on Civil and Political Rights in its Article 14, section 2.

Historically, critics of *Woolmington* find that it is a resounding endorsement of the principle; it focused more on the burden of proof only.²⁵ If such an assumption is correct, then the principle itself has no application beyond the trial because it only concentrates on the burden of proof. This article argues that such an assumption is obsolete because we live in an entirely different era from when the decision was issued.²⁶ Of course, that a suspect cannot be treated entirely the same as a non-suspect citizen. It would be absurd for the Indonesian police after arresting suspects to hold a belief that their suspect is innocent since arrest occurs if there is preliminary evidence (*bukti permulaan yang cukup*).²⁷ The law clearly says for the sake of enforcement, once criminal suspicion focused on a particular individual, his status does change, and his rights to liberty and bodily integrity may be curtailed.

This article criticizes the ritual that imposes pre-conviction punishment to the suspect because it would undermine the right to be presumed innocent. The authority, in this case, National Police of Indonesia, has been using this technique to help them to mold public opinion with the hope of deterring the crime. However, it only provides partial coverage of crime stories. It is a legalized technique to demonstrate that authorities are serving justice; therefore, they need help from the media to distribute that information to the public. What makes it worse, the impact of online technologies of the media on the presentation will quickly kill the presumption of innocence

²³ *Woolmington v DPP* [1935] UKHL 1 is a landmark House of Lords case, where the presumption of innocence was first articulated in the Commonwealth. [1935] AC 462 at 481 (*Woolmington v DPP*)

²⁴ Siyuan Chen, A Preliminary Survey of the Right to Presumption of Innocence in Singapore 20.

²⁵ Ferguson, *supra* note 15.

²⁶ Lauren M. Goldman, *Trending Now: The Use of Social Media Websites in Public Shaming Punishments Notes*, 52 AM. CRIM. LAW REV. [i]-452 (2015).

²⁷ In Indonesia, one can only be arrested if there is sufficient preliminary evidence ("bukti permulaan yang cukup") as mandated by article 17 KUHAP

principle. Unavoidably, it would distort the information regarding the guilty of a person. As we have known, the media itself have a less systematic approach towards their information. The communication between individuals who commit crimes and the media tends to be sporadic, let alone discussion in social media. Consequently, it would be reasonable to argue that the punishment has begun before the trial starts.

This article argues is that although becoming a suspect does impose certain burdens, it is not the same as the status of someone who has already established guilt. It begs the question of whether the shaming ritual imposed by the police constitutes punishment? My answer is yes because it imposes inappropriate punishment against the accused at the very early stages of the criminal justice system. Moreover, the consequence of such punishment might be more harmful than the actual punishment imposed by the system. It would also undermine the function of the criminal trial because the accused has suffered severe damages as a result of public humiliation. This article proposes that in order to avoid inappropriate punishment, the principle should apply to avoid excessively punishing those who without conviction²⁸ for a crime. This paper will further elaborate on the answer in the following section of this article.

III. PRESENTATION OF SUSPECT: IS IT A FORM OF PRE-CONVICTION PUNISHMENT?

Indonesian legal culture has long recognized the ritual of parading suspect and criminal convicts for shaming. For example, in the exclusive province of Aceh, Indonesia's deep conservative province, public canning is permissible under Sharia law. Since the introduction of the punishment in Aceh in 2005, authorities publicly caned hundreds of people. In Bali, which is dubbed the most tolerant province in Indonesia, the ritual of public shaming also practiced for drug users. In February 2019, twenty-three drug suspects had been transported the 8 kilometers (4.9 miles) from Police's detention center to Police station for a media conference.

In the Indonesian media, the practice of presenting suspects was first used to find co-defendants in a joint criminal enterprise. The State-owned television channel, *TVRI*, first aired it on in December 1989.²⁹ Indonesian scholar *H. Loebby Loqman* argued that the issue of media coverage of a criminal case lies on a different interpretation of the presumption of innocence principle, which stipulated in Journalist's Code of Ethics.³⁰ The first opinion came from those who believe it is inappropriate to disclose the name (even it is their initials), identity, or portrait of a suspect. Another opinion argued that the principle would only apply for a case previously tried before the court. The application of the principle is yet to be active in the pre-trial stage. Therefore, the news coverage before the trial is not required to conceal the identity of the suspect. From these interpretations – which eventually breed several variations of news coverage regarding the presumption of innocence

²⁸I agree with the view of Patrick Tomlin, that the applicability of the principle must be given a broader role so that it could avoid inappropriate punishment. Prevention and the limits of the criminal law, (Andrew Ashworth et al. eds., 1st ed ed. 2013).

²⁹Rose Yulianingrum, "Tinjauan Yuridis Terhadap Pemberitaan Pers yang Mengabaikan Asas Praduga Tak Bersalah (*Presumption of Innocence*) Dihubungkan dengan Delik Trial by the Press" (Tesis Universitas Indonesia, Jakarta, 2004), p. 99-100

³⁰H. Loebby Loqman, "Asas Tak Bersalah Dalam Pemberitaan Oleh Media Massa", professorship inaugural speech, Faculty of Law University of Indonesia, 1994. Cited from Dr Bagir Manan et al., *Asas Praduga Tidak Bersalah dalam Praktek Pers*, 2 J. Dewan Pers 118 (2010).

principle – emerge a problem, to what extent the news coverage bound to the presumption of innocence principle.

Although the national police have established an SOP for presenting the suspect to the media, it ignites the question: it is enough to presume the accused is innocent by giving them a mask to cover their face and not revealing her full name? This answer depends on the situation because the focus is on whether such practice communicates pre-conviction punishment. If the police are arresting high profile suspects, there is a high possibility that the public will already know who the person behind the cover is. It would be impossible to hide their identity since it is the nature of the press to follow high profile stories. In some cases, the accused cannot even cover their face or can only cover his face with a jacket.

Moreover, in this age of advanced social media, it is almost impossible for people to hide their identity entirely. The use of the internet has begun a new wave in humiliating offenders. Take a look at what happens to one of the suspects when the Indonesian police raided *Atlantis Spa*, a gay sauna, in 2017 and then arrested 141 people and charged 10 for holding a gay sex party.³¹ The police stormed the premises and then herded naked, cowering men into the middle of the room and began taking photos of 141 men. Subsequently, after the arrest, police officials presented the suspects in front of the media and interrogated them. Within hours, some of the photos appeared on Indonesian social media. The *New York Times* wrote an article interviewing *Handoko*³², one of the suspects in that event and describing how he was humiliated by such treatment. There is another story of Indonesian actress *Vanessa Angel*, who is a suspect in high profile prostitution scandal in 2019. After the presentation of the police revealing her case without only mentioning her initials, public judgment in social media mostly corners *Vanessa*. It exposes her selling herself to the underground online prostitution service. This case triggers social commentators to try the case in the court of public opinion. During the writing of this article, she is currently in jail while waiting for her trial. Through her lawyer, she feels that she is being humiliated and even longing for suicide.³³

Observing such a situation, on the one hand, we can argue that when police allow representatives of the media to cast an aura of guilt to the suspect, such ritual will undoubtedly form a public judgment towards *Vanessa* and *Handoko* and imposes pre-conviction punishment against them. On the other hand, the proponent of such practice could argue that the police must inform the public about law enforcement activities. Unfortunately, in Indonesia, when these interests collide, and suspects feel police or members of the media have overstepped their bounds, the suspects do not have any legal means to challenge such action. It places the defendant in a vulnerable position as there are no procedural safeguards to protect her rights because the justification offered for them by the government has not subjected to scrutiny.

The most cited reason to justify shaming ritual is to deter the crime at the cost of embarrassing the suspect. Payment is a must because it is necessary for the protection of society. Prostitution and homosexuality, according to the police, prostitution poses a

³¹ The video is available on Youtube. See (41) 8 Orang Ditangkap Karena Pesta Gay di Surabaya NET24 - YouTube, <https://www.youtube.com/watch?v=TD5XgE7Gp0I> (last visited May 13, 2019).

³² Jeffrey Hutton, *Indonesia's Crackdown on Gay Men Moves From Bars Into the Home*, The New York Times, December 22, 2017, <https://www.nytimes.com/2017/12/20/world/asia/indonesia-gay-raids.html> (last visited May 16, 2019). Handoko is not his real name.

³³ Kuasa Hukum Sebut Vanessa Angel Sempat Ingin Bunuh Diri, <https://www.cnnindonesia.com/nasional/20190322164246-12-379835/kuasa-hukum-sebut-vanessa-angel-sempat-ingin-bunuh-diri> [en. Defense counsel says that Vanessa Angel has been longing for suicide in jail] (last visited Apr 1, 2020).

threat to society.³⁴ The deterrent efficacy of shame is an empirical question, which can be answered only after shaming penalties is tried long enough to study their effects. Shaming ritual deters by raising the cost of criminal behavior. Potential offenders refrain from committing crimes when the threat of unpleasant consequences offsets the expected gains from breaking the law, and the consequences of shaming penalties are incredibly unpleasant.³⁵ This article agrees with the view that deterrence should be achieved through post-conviction sentencing and not by making the process of criminal investigation and adjudication more harmful to the presumptively innocent accused.³⁶

It would be easier to justify the shaming of the criminal convict because of the conviction itself inherently humiliating. However, the case is entirely different when it comes to a person that is yet to be convicted or even formally charged. Imagine the cost of informing the public that the police impose tough on crime policy in both consensual gay sex and prostitution: The targets of the presentation, are publicly embarrassed and immediately shackled with the assumption of guilt. However, what if they are not guilty or less guilty as propagated by the police? If it is not enough, then imagine when public officials stage the encounters in intending to humiliate the suspects to deter this type of crime. They will work together with the media to try, convict, and punish the suspect in the press. Arguably, their actions communicate an aura of guilt while at the same time, effectuate shame punishments before the judicial process even begins.³⁷ The images from the presentation unnecessarily cover their victims in shrouds of guilt and embarrassment when broadcasted to millions of people. Then it begs the question, would not the cost be too expensive? The analysis should weigh the cost caused by such practice against its justifications. Since the discussion about the legality of such practice in Indonesia is extremely limited, there is a lesson from the U.S jurisdiction that worth to be examined regarding on how to achieve the balance between the public's interest and fundamental rights of being presumed innocent until proven guilty.

In the United States, shaming ritual in the form of [perp]etrator walk is reserved only for a particular type of crime. In general, a perp walk is a practice widely used in the U.S justice system, where an arrested suspect was taken to a public space, thus allowing the media to capture the event-reserved for serial killers, political assassins, and infamous organized crime figure.³⁸ The famous perp-walk in the U.S happened in 2011. At that time, the then International Monetary Fund ("IMF") and French presidential contender, Dominique Strauss-Kahn – also known as "DSK" –was arrested at John F Kennedy airport on charges of sexually assaulting a hotel maid. The next day, he was forced to do the "walk" before tens of cameras. The French media and public opinion expressed shock and outrage at the images of DSK's walk-in handcuffs, replayed in endless loops on TV and the Internet around the world. The even triggered public debate. Some say that it is a violation of the presumption of innocence. Another argument says that he deserves it because of the nature of the

³⁴ This statement is official issued by the National Police. See full statement on Youtube in: Vanessa Angel Jadi Tersangka, Ini Penjelasan Polda Jawa Timur - YouTube, <https://www.youtube.com/watch?v=h5wTt3Bgd70> (last visited May 12, 2019).

³⁵ Dan M. Kahan, *Shaming White Collar Offenders Shaming Penalties: Pro and Con*, 12 Fed. Sentencing Report. 51–55 (1999).

³⁶ Palma Paciocco, *Pilloried in the Press: Rethinking the Constitutional Status of the American Perp Walk*, 16 New Crim. Law Rev. Int. Interdiscip. J. 50–103 (2013).

³⁷ Kyle J. Kaiser, *Twenty-First Century Stocks and Pillory: Perp Walks as Pretrial Punishment Note*, 88 Iowa Law Rev. 1205–1242 (2002).

³⁸ Ryan Hagglund, *CONSTITUTIONAL PROTECTIONS AGAINST THE HARMS TO SUSPECTS IN CUSTODY STEMMING FROM PERP WALKS*, 81 Miss. LAW J. 152.

crime. Later, DSK released from all charges. However, the damage to his reputation is irreversible, because his pictures in a handcuffed are everywhere on the Internet. In France, a 2000 law criminalizes the publication of photographs of an identifiable person in handcuffs-not yet convicted. Some people consider Perp walk as a media ritual. The practice of perp walks illustrates the symbiotic relationship between the police and the press.³⁹ While the American media have a policy of withholding the name of alleged rape victims, the exhibition of suspected perpetrators of all crimes is a tradition marked by some other famous suspects before DSK: from Al Capone to Lee Harvey Oswald, Michael Jackson, and Bernard Madoff. This stark contrast of how ritual defines justice uncovers what is at stake in rituals shared by a community.

In the American criminal justice system, the origin of the Perp walk can be traced back to the 19th century, although it was then merely a way to bring prisoners to court. It was in 1903, when the NYPD marched mafia members through the streets of Little Italy, that it became an instrument of self-congratulation for law enforcement, and humiliation for the suspects.⁴⁰ Even though it is a controversial practice, U.S courts have decided that perp walks are constitutionally acceptable under certain conditions.⁴¹ In their decisions, judges have employed a balancing test arguing that the interests of the public and the press in wanting to view perp walks outweigh the rights of criminal suspects to be free from prejudicial publicity and pre-conviction punishment.⁴² The courts have categorized perp walks into three categories: staged, non-staged, and choreographed. The court decided that only staged perp walks that are unconstitutional and the other two are constitutional. The staged perp walk category was defined by United States Court of Appeals for the Second Circuit in *Lauro v. Charles*.⁴³

“In a staged walk, the police take the suspect outside the station house, at the request of the press, for no reason other than to allow him to be photographed.”

Staged perp walks are unconstitutional because it is conducted solely for the benefit of the press without serving any legitimate law enforcement purpose. Such practice violates a suspect’s right to privacy and, therefore, is unconstitutional.⁴⁴ The second type of perp walk is non-staged perp walk. This type of perp walk is practiced when the suspect is being transferred for a legitimate law enforcement purpose. For example, when the suspect transferred from jail to a courthouse, there is a possibility that the media happen to observe this activity without being specifically notified in advance that it would occur.⁴⁵ The last category is choreographed perp walk. This happens when the media gets notified in advance regarding when and where the suspect awaits transfer for a legitimate law enforcement purpose. Authorities declared

³⁹ Slyke, Benson, and Virkler, *supra* note 9.

⁴⁰ Sandrine Boudana, *Shaming rituals in the age of global media: How DSK’s perp walk generated estrangement*, 29 Eur. J. Commun. 50–67 (2014).

⁴¹ *Caldarola v. County of Westchester*, 142 F. Supp. 2d 431 (S.D.N.Y. 2001), Justia Law, <https://law.justia.com/cases/federal/district-courts/FSupp2/142/431/2346952/> (last visited May 13, 2019).

⁴² Slyke, Benson, and Virkler, *supra* note 9.

⁴³ *Lauro v. Charles*, 219 F.3d 202 (2d Cir. 2000). This case is deeply discussed in Palma Paciocco, *Pilloried in the Press: Rethinking the Constitutional Status of the American Perp Walk*, 16 New Crim. Law Rev. Int. Interdiscip. J. 50–103 (2013).

⁴⁴ Paciocco, *supra* note 32.

⁴⁵ Slyke, Benson, and Virkler, *supra* note 9.

both non-staged and choreographed perp walks constitutional because there is no violation of the right to privacy or the prohibition against pre-conviction punishment.

Speaking about imposing the ritual to deter the crime, In *Bell v. Wolfish*⁴⁶, the Court held that the state should not justify treatment against pre-trial detainees on the basis that doing so may deter the crime. Such ritual constitutes a punishment if it is arbitrary or purposeless. Now the next question is whether the shaming ritual imposes punishment? A parade of suspects appeared before the public and subjected to condemnation in the glare of media coverage can be seen as a status degradation ceremony. According to *Garfinkel*, in the anthropological account, an event can be deemed as a degradation ceremony in that the public identity of an actor transformed into something that can be considered lower in the local scheme of social types.⁴⁷ A vital component of the status degradation ceremony is a public denunciation wherein someone, acting in a public capacity with authority to act, invokes the values of the group and delivers the denunciation in terms of those values.⁴⁸ In many respects, the practice of presenting the suspects conducted by the national police fits *Garfinkel's* concept. A press conference is a ceremonial venue; the authority vested members of the police to enforce the law, and they denounced the suspects. While it is true that inherently criminal sanctions are degrading, but we are talking for persons that are yet to be convicted by the court, and their nature of offenses is highly questionable. Police is vested with the obligation to treat the defendant with the principle of presumption of innocence. The practice of presenting the suspects is about the ritual destruction of the person denounced.⁴⁹ Such destruction intends to deter crime and protecting society from dangerous crimes. Applying the *Bell* test in the context of the presentation of suspects will trigger the question of the seriousness level of the crime itself.

IV. JUSTIFYING PRESENTATION OF SUSPECTS: THE NATURE OF THE OFFENSES

This article argues that the presentation of suspects could not be justified in the case of victimless crimes. This article completely aware that there might be a disagreement over what constitutes a victimless crime. However, some of the most precise cut cases of victimless crimes are adult consensual prostitution and consensual gay sex.⁵⁰ The only recognition of those acts a crime is in the law itself. That is why I choose only to focus on these offenses. This article shares the view that the presentation of suspects is sometimes necessary in the case of serious crimes such as serial killers, corruption, political assassin, and any other extraordinary crimes. The gravity of such crimes are severe enough to society, and thus require certain acts to protect society from them. One way to protect them is to reveal the identity of the suspects. Revealing the identity could at least serve two purposes: First, to deter the crime by shaming the offender. Second, to help the investigation. Exposing a suspect in organized crimes may induce witnesses or victims to come forward to provide evidence connecting the individual with whom he associates to the same or other crimes.

⁴⁶ *Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979).

⁴⁷ Harold Garfinkel, *Conditions of Successful Degradation Ceremonies*, 61 Am. J. Sociol. 420–424 (1956).

⁴⁸ Gray Cavender, Kishonna Gray & Kenneth W. Miller, *Enron's perp walk: Status degradation ceremonies as narrative*, 6 Crime Media Cult. Int. J. 251–266 (2010). p255

⁴⁹ Garfinkel, *supra* note 43. p421

⁵⁰ Erika Magdalena Chandra, *Victimless Crime in Indonesia: Should We Punished Them?*, 6 PADJADJARAN J. LAW 216–232 (2019).

In this paper, I argue that the nature of the offense of prostitution and consensual gay sex inspires less horror than the shaming ritual. Both arguably are a victimless crime⁵¹ in which such crime has no victim, apart from the perpetrator of the crime itself. Is degrading them necessary for the sake of protecting society? My answer is not, because clearly, it is not only a clear violation of the presumption of innocence principle but also imposing inappropriate pre-conviction punishment. Let me begin with a discussion regarding prostitution. Putting aside the potential arguments about societal harms that would be difficult (if not impossible) to measure, prostitution, and the consensual gay sex is an example of victimless crime. There are a buyer and a seller, and there is a bargained-for exchange between two consenting people. Sadly, prostitution in Indonesia is full of contradictions. First, the legal status is unclear. Second, many studies found that there is a problem of gender bias in Indonesia. The social attitudes tolerate men to seek sexual satisfaction outside of marriage, but not for women.⁵² The case of *Vanessa Angel* is the perfect example of this notion. Gender activist is questioning gender inequality and as a consequence, placing her in a very vulnerable position.⁵³ What makes it worse is, during the trial, the legal authorities refused to reveal the male customer.

Legally speaking, no law in Indonesia prohibits the sale of sexual services. The law only prohibited those who help and facilitate illegal sexual activities as defined in articles 296, 297, and 506 of the Dutch-colonial based criminal Code (“KUHP”). The law only prohibits the intermediary (or “*mucikari*” in the Indonesian term) who intentionally organizes and facilitates sexual activities. Frustrated by the ambiguity of the law in charging prostitutes, both the police and the prosecutor then charged the soap opera actress with article 27 (1) on the electronic information and transactions law (“ITE”). The charges describe she directly exploited and offered her services to a *mucikari* by sending her photos and videos. During her arrest, she was caught red-handed with his male customer at a hotel in Surabaya in January 2019. Unfortunately for her, after the arrest, the police presented her before the public, and the Indonesian media gives glowing coverage of prostitution, mostly questioned her morality. It is because the unwritten society “law” shapes community norms and attitudes⁵⁴, and as a result, the legal authorities begin to police morality at the cost of embarrassing the suspect.

Now, it is time to look into the argument to justify why consensual gay sex is considered a crime in the first place. In Indonesia, although same-sex behavior is not a crime under Indonesian law, there is an effort from conservative groups to criminalize it⁵⁵ because some see it as a deviation from the value that society has known for a long

⁵¹I am fully aware that using the term “victimless crimes” to argue about the seriousness of the crimes of prostitution and gay sex will provoke further debate in Indonesia.

⁵² Terence H. Hull, *From Concubines to Prostitutes. A Partial History of Trade in Sexual Services in Indonesia*, Moussons 65–93 (2017). p66

⁵³ Petir Garda Bhwana, *Vanessa Angel Alleged Prostitution and Gender Inequality* Tempo (2019), <https://en.tempo.co/read/1162615/vanessa-angel-alleged-prostitution-and-gender-inequality> (last visited May 12, 2019).

⁵⁴ Hull, *supra* note 47.

⁵⁵One strain of the current agitation began in January 2016 when Indonesia’s Higher Education Minister Mohammed Nasir tweeted that he wanted to ban all LGBT student groups from university campuses. See for instance, news article from The Jakarta Post, *LGBT not welcome at university: Minister* The Jakarta Post, <https://www.thejakartapost.com/news/2016/01/25/lgbt-not-welcome-university-minister.html> (last visited May 16, 2019).

time.⁵⁶ It is considered morally threatening to the religious society. One exception applies to Aceh region, which is the only province in Indonesia allowed to implement Sharia law as a result of political negotiation in 2005. The 2014 local criminal code of Aceh includes criminal punishment for adult consensual same-sex conduct, and the punishment is public canning. In December 2017, the Indonesian Constitutional Court rejected a petition to make gay sex and sex outside marriage illegal. In their five to four decision by the nine-judge panel, the majority of judges took the restrained position that it was parliament's, not the court's role to criminalize actions. In the case of *Atlantis spa*, the national police acted under the pretext of the 2008 Anti-Pornography law. This law does prohibit consensual gay sex in terms of banning the production and distribution of pornography content, which includes gay sex. The law considers gay sex as a deviant sexual act.⁵⁷ This clause opened the door to the prosecution of anything deemed indecent by officials.

The action of the national police in presenting the suspect is more of a reaction to protect the morality of the people than enforcing the law. Yes, it might be argued that one of the purposes of the law is to protect the morality of the people. Depending on what your school of thought, the relationship between law and morality provokes an in-depth philosophical debate. For legal positivism, law and morality are two distinct concepts.⁵⁸ The question of what the law is and the question of what it ought to be are separable. One, especially government officials, could not employ their version of moral judgments. For non-positivism thinker, law and morality is closely associated, because morality influences the law. Regardless of the debate, there must be a standard in regulating the practice. Furthermore, in such a standard, the nature of the offenses must be considered. The standard must be concrete, not an abstract standard, such as "protecting the morality of Indonesian people." After all, isn't it the purpose of establishing the rule of law?

As the police understood, prostitution and gay sex is a threat to societal norms. As this article has mentioned, the society norms which act as unwritten law, shapes community reaction. Moreover, the reaction of the police is to present the suspect before the public because they believe it is necessary for the protection of society from deviant behavior. The written law serves only as a pretext to arrest them. Sadly, such a reaction is a misconception about the nature of deviant behavior. Thus, it makes no sense to inform the public that justice is served, because not only would it be too absurd, but it would also eventually outbalance the fundamental principle of the right to be presumed innocent until found guilty.

V. CONCLUSIONS

The applicability of the presumption of innocence is not only confined at the trial level; it must demonstrate a mindset that determines the conduct on how to treat the accused for the duration of the criminal process because it is fundamental protection given by the state for the accused. The application of the principle cannot be translated by merely hiding the identity of the accused, and it must extend beyond

⁵⁶See for instance Elizabeth A. Rooney & Don C. Gibbons, *Social Reactions to "Crimes without Victims"*, 13 Soc. Probl. 400–410 (1966), <https://www.jstor.org/stable/798588> (last visited May 13, 2019). P.401

⁵⁷See Article 4 of the law

⁵⁸JOSEPH RAZ, *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY* (2009); Leslie Green, *Escapable Law: Gardner on Law and Morality*, UNIV. OXF. LEG. RES. PAP. SER. 25 (2018); Salman Manggalatung, *Hubungan antara Fakta, Norma, Moral dan Doktrin Hukum dalam Pertimbangan Putusan Hakim*, J. CITA HUK. (2014).

that. It would be to no avail because such a presentation usually imposed on high profile defendants. In the case of consensual gay sex and prostitution, the argument in supporting the presentation fails the balancing analysis that is required to weigh those purposes against the accused's right to be presumed innocent. It can be argued that the cost of degrading suspects outweighs the need to protect society from such crimes. There are at least two possible explanation in supporting that statement: First, such a ritual has no legitimate law enforcement purposes and based on misconceptions of the crime. It undoubtedly imposes pre-conviction punishment even before the trial began. The use of the strategy could be more harmful than the actual punishment from the judge. Consequently, the outcome of the trial will no longer be important for the defendant because the damage has already done, and it is irreversible. The real punishment itself comes in the form of humiliating the accused, and it can easily be done in the era of advanced social media. Therefore, the power of law enforcement apparatus to cast a massive aura of guilt must at least comes under strict scrutiny. Second, it is hard to justify the use of pre-conviction punishment to deter crime since deterring people itself cannot be justified, except through post-conviction punishment. In the end, the presentation of suspects must be set aside for crimes based on the severity and the type of crimes. The action must be so excessive and poses a real danger to society to justify the usage of such ritual.

BIBLIOGRAPHY

- (40) Vanessa Angel Jadi Tersangka, Ini Penjelasan Polda Jawa Timur - YouTube, <https://www.youtube.com/watch?v=h5wTt3Bgd70> (last visited May 12, 2019).
- Siyuan Chen, A Preliminary Survey of the Right to Presumption of Innocence in Singapore 20.
- Caldarola v. County of Westchester, 142 F. Supp. 2d 431 (S.D.N.Y. 2001), <https://law.justia.com/cases/federal/district-courts/FSupp2/142/431/2346952/> (last visited May 13, 2019).
- Shanna R. Van Slyke, Michael L. Benson & William M. Virkler, *Confidence in the Police, Due Process, and Perp Walks*, 17 *Criminology & Public Policy* 605–634 (2018).
- Ryan Hagglund, *Constitutional Protections Against The Harms To Suspects In Custody Stemming From Perp Walks*, 81 *Mississippi Law Journal* 152.
- Indonesia National Police Chief Regulation, *Criminal Investigation Management* (2012).
- Mary Angela Bock, *Framing the Accused: The Perp Walk as Media Ritual*, 22 *Visual Communication Quarterly* 206–220 (2015).
- Annie Hill, *How to Stage a Raid: Police, media, and the master narrative of trafficking*, 1 (2016), <http://www.antitraffickingreview.org/index.php/atrjournal/article/view/199> (last visited May 15, 2019).
- Indonesia National Police Chief Regulation, *Indonesia National Police Chief Regulation on the Implementation of Human Rights Principles and Standards* (2009), <https://referensi.elsam.or.id/wp-content/uploads/2014/10/Peraturan-Kaporli-No-8-Tahun-2009-Tentang-Implementasi-Prinsip-Dan-Standar-Hak-Asasi-Manusia-Dalam-Penyelenggaraan-Tugas-Kepolisian-Negara-Republik-Indonesia.pdf.filepart> (last visited May 12, 2019).
- Justice: a reader, (Michael J. Sandel ed., 2007).

- Nick Couldry, *Media rituals: a critical approach* (2005), <http://public.eblib.com/choice/publicfullrecord.aspx?p=237348> (last visited May 6, 2019).
- Ernest F Lidge III, *Perp Walks, and Prosecutorial Ethics*, 7 18.
- Palma Paciocco, *Pilloried in the Press: Rethinking the Constitutional Status of the American Perp Walk*, 16 *New Criminal Law Review: An International and Interdisciplinary Journal* 50–103 (2013).
- Lonneke Stevens, *Pre-Trial Detention: The Presumption of Innocence and Article 5 of the European Convention on Human Rights Cannot and Does Not Limit its Increasing Use*, 17 *European Journal of Crime, Criminal Law and Criminal Justice* 165–180 (2009).
- Jeff Thaler, *Punishing the Innocent: The Need for Due Process and the Presumption of Innocence Before Trial*, 1978 *Wis. L. Rev.* 441–484 (1978).
- Shima Baradaran, *Restoring the Presumption of Innocence*, 72 54.
- Sandrine Boudana, *Shaming rituals in the age of global media: How DSK's perp walk generated estrangement*, 29 *European Journal of Communication* 50–67 (2014).
- Nasr Pierce et al., *Tariq Ramadan, Islam, and the Presumption of Innocence* HuffPost (400AD), https://www.huffpost.com/entry/tariq-ramadan-islam-and-the-presumption-of-innocence_b_59f215f7e4b06ae9067ab704 (last visited May 17, 2019).
- Andrew Carl Stumer, *The Presumption of innocence: evidential and human rights perspectives* (2010).
- (42) Penipu Indian Hadiah Abal Abal Diringkus - YouTube, <https://www.youtube.com/watch?v=J000Bmc7McU> (last visited May 14, 2019).
- Dr Bagir Manan et al., *Asas Praduga Tidak Bersalah dalam Praktek Pers*, 2 *Jurnal Dewan Pers* 118 (2010).
- Bell v. Wolfish*, 441 US 520 (1979).
- Peter H. Rossi, Jon E. Simpson & JoAnn L. Miller, *Beyond crime seriousness: Fitting the punishment to the crime*, 1 *J Quant Criminol* 59–90 (1985).
- Harold Garfinkel, *Conditions of Successful Degradation Ceremonies*, 61 *American Journal of Sociology* 420–424 (1956).
- Gray Cavender, Kishonna Gray & Kenneth W. Miller, *Enron's perp walk: Status degradation ceremonies as narrative*, 6 *Crime, Media, Culture* 251–266 (2010).
- Jon Emont, *Indonesia Police Arrest 141 Men Accused of Having Gay Sex Party*, *The New York Times*, January 20, 2018, <https://www.nytimes.com/2017/05/22/world/asia/indonesia-gay-sex-party-police.html> (last visited May 16, 2019).
- Jeffrey Hutton, *Indonesia's Crackdown on Gay Men Moves From Bars Into the Home*, *The New York Times*, December 22, 2017, <https://www.nytimes.com/2017/12/20/world/asia/indonesia-gay-raids.html> (last visited May 16, 2019).
- Michael Salter, *Justice, and revenge in online counter-publics: Emerging responses to sexual violence in the age of social media*, 9 *Crime, Media, Culture* 225–242 (2013).
- Steven A. Kohm, *Naming, shaming and criminal justice: Mass-mediated humiliation as entertainment and punishment*, 5 *Crime, Media, Culture* 188–205 (2009).
- Prevention and the limits of the criminal law, (Andrew Ashworth et al. eds., 1st ed. 2013).
- Dan M. Kahan, *Shaming White Collar Offenders Shaming Penalties: Pro and Con*, 12 *Fed. Sent'g Rep.* 51–55 (1999).

- Pamela R. Ferguson, *The Presumption of Innocence and its Role in the Criminal Process*, 27 Crim Law Forum 131–158 (2016).
- Ferry de Jong & Leonie van Lent, *The Presumption of Innocence as a Counterfactual Principle*, 12 ULR 32 (2016).
- Lauren M. Goldman, *Trending Now: The Use of Social Media Websites in Public Shaming Punishments Notes*, 52 Am. Crim. L. Rev. [i]-452 (2015).
- Kyle J. Kaiser, *Twenty-First Century Stocks, and Pillory: Perp Walks as Pretrial Punishment Note*, 88 Iowa L. Rev. 1205–1242 (2002).
- (41) 8 Orang Ditangkap Karena Pesta Gay di Surabaya NET24 - YouTube, , <https://www.youtube.com/watch?v=TD5XgE7Gp0I> (last visited May 13, 2019).
- (41) Penjelasan Polisi soal Transaksi dan Uang di Kasus Vanessa Angel - YouTube, , <https://www.youtube.com/watch?v=YVVrV2-gBjA> (last visited May 13, 2019).
- Anna Carline, *Criminal justice, extreme pornography, and prostitution: Protecting women or promoting morality?*, 14 Sexualities 312–333 (2011).
- Terence H. Hull, *From Concubines to Prostitutes. A Partial History of Trade in Sexual Services in Indonesia*, *moussons* 65–93 (2017).
- Suvianita Khanis, *Human Rights, and the LGBTI Movement in Indonesia*, 19 Asian Journal of Women's Studies 127–138 (2013).
- Human Rights Watch | 350 Fifth Avenue, 34th Floor | New York & NY 10118-3299 USA | t 1.212.290.4700, Letter on Police Raids Against LGBT People in Indonesia Human Rights Watch (2017), <https://www.hrw.org/news/2017/06/01/letter-police-raids-against-lgbt-people-indonesia> (last visited May 13, 2019).
- The Jakarta Post, LGBT not welcome at university: Minister The Jakarta Post, <https://www.thejakartapost.com/news/2016/01/25/lgbt-not-welcome-university-minister.html> (last visited May 16, 2019).
- Christen Broecker, Elaine Pearson & Joseph Saunders, *Policing morality: abuses in the application of Sharia in Aceh, Indonesia* (2010).
- Elizabeth A. Rooney & Don C. Gibbons, *Social Reactions to "Crimes without Victims,"* 13 Social Problems 400–410 (1966).
- Petir Garda Bhwana, Vanessa Angel Alleged Prostitution and Gender Inequality Tempo (2019), <https://en.tempo.co/read/1162615/vanessa-angel-alleged-prostitution-and-gender-inequality> (last visited May 12, 2019).
- Igor Primoratz, *What is Wrong with Prostitution?*, 68 Philosophy 159–182 (1993).
- Republic of Indonesia. (1981). Law No 8. *Criminal Procedure Law, TAMBAHAN LEMBARAN NEGARA REPUBLIK INDONESIA NOMOR 3258*. Jakarta: State Gazette.
- Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000)
- Rose Yulianingrum, "Tinjauan Yuridis Terhadap Pemberitaan Pers yang Mengabaikan Asas Praduga Tak Bersalah (*Presumption of Innocence*) Dihubungkan dengan Delik Trial by the Press" (Tesis Universitas Indonesia, Jakarta, 2004), p. 99-100
- H. Loebby Loqman, "Asas Tak Bersalah Dalam Pemberitaan Oleh Media Massa", professorship inaugural speech, Faculty of Law University of Indonesia, 1994.
- Woolmington versus Department of Public Prosecutor, UKHL 1, AC 462; (1936) 25 Cr App R 72 (House of Lords 1935).
- Lev, Daniel S. "Judicial Authority and the Struggle for an Indonesian Rechtsstaat." *Law & Society Review* 13, no. 1 (1978): 37–71.