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Constructing the Concept of Commissioner Judge in Enforcing the Exclusionary Rules Principle in Indonesia

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Abstract: *Pretrial aims to protect human rights from misuse of authority by law enforcement officials. The concept of commissioner judges, which aims to be a substitute for the current pretrial procedure. It is expected to achieve the objectives of criminal procedural law that respects human rights by upholding the exclusionary rules principle. This study aims to understand the role of the commissioner judge in upholding the principle of exclusionary rules to achieve a criminal legal process that respects human rights. Further, a normative approach used statutory, conceptual, and comparative legal approaches. The author tries to discover the concept of a commissioner judge upholding the exclusionary rules principle to assess the validity of evidence obtained by law enforcement officials. It is hoped that the objectives of criminal procedure law that protect and guarantee the interests of human rights can be achieved by the concept of commissioner judge.*

Keywords: *Commissioner Judge; Due process of law; Exclusionary rules; Pretrial.*

Abstrak: Praperadilan bertujuan untuk melindungi hak asasi manusia dari penyalahgunaan wewenang oleh aparat penegak hukum, konsep Hakim Pemeriksa Pendahuluan atau hakim komisaris yang bertujuan menjadi pengganti dari prosedur praperadilan yang dikenal saat ini diharapkan mampu mewujudkan tercapainya tujuan Hukum Acara Pidana (HAP) yang menghormati hak asasi manusia dengan menegakkan prinsip *exclusionary rules*. Tujuan penelitian ini agar dapat memahami peran Hakim Pemeriksa Pendahuluan (hakim komisaris) dalam menegakkan prinsip *exclusionary rules* agar tercapainya proses hukum pidana yang menghormati hak asasi manusia. Metode dalam tulisan ini ialah menggunakan Pendekatan Normatif dengan menggunakan pendekatan undang-undang, Konseptual dan perbandingan hukum. Penulis mencoba mengetahui Konsep Hakim Pemeriksa Pendahuluan (hakim komisaris) dalam penegakan prinsip *exclusionary rules* guna menilai keabsahan alat bukti yang diperoleh aparat penegak hukum. Dengan adanya Konsep Hakim Pemeriksa Pendahuluan (hakim komisaris) diharapkan dapat tercapainya tujuan HAP yang melindungi dan menjamin kepentingan HAM.

Kata Kunci : Hakim Komisaris; proses hukum yang sesuai; Praperadilan; alat bukti yang sah

INTRODUCTION

Albert Venn Dicey elaborates on three essential features in every State of Law, which he called "The Rule of Law" namely *Supremacy of Law*, *Equality before the law*, and *Due Process of Law*¹, one of the principles "The Rule of Law" applied to Criminal Procedure Law (HAP) is

¹ Zahermann Armandz Muabezi, "Negara Berdasarkan Hukum (Rechtsstaats) Bukan Kekuasaan (Machtsstaat),"

Due Process of Law which means a correct or fair legal process².

Criminal Procedure Law (HAP) is a legal tool used to obtain the actual truth (material reality, substantive truth, materiellen wahrheit) or substantive truth³. In addition to being used to find the truth, it is also used to limit the authority of law enforcement officials (APH) to protect the human rights of suspects and defendants.

Pretrial is one of the forms of legal protection regulated in Article 77 of the Criminal Procedure Code (KUHAP) and expanded its scope through Constitutional Court Issued in No. 21/PUU-XII/2014, Constitutional Court Issued in No. 109/PUU-XIII/2015, Constitutional Court Issued in No. 102/PUU-XIII/2015, Constitutional Court Issued in No. 130/PUU-XIII/2015, the development of pretrial resources is clear evidence of the implementation of responsiveness. This theory describes the right to respond to social regulations and community expectations⁴.

Development scope of pretrial shows how necessary pretrial procedures are to protect human rights (HAM) from arbitrary law enforcement efforts, but as the author quotes from the concept of the academic paper of the Criminal Procedure Bill (RUU KUHAP): "Pretrial is considered ineffective because it is passively waiting for the parties' lawsuit," besides, according to the author, pretrial does not yet have the authority to enforce the principle of exclusionary rules and the feasibility of a case to be prosecuted/carried to court (considering that many trivial cases are brought to court without considering settlement through penal mediation procedures) so that in the RUU KUHAP appears an idea of a preliminary examination judge or commissioner judge whose existence and authority will be independent and not attached to the district court, then it is hoped the objectives of HAP can be achieved to protect suspects and defendants from abuse of authority⁵.

The commissioner judge / preliminary examiner in previous studies only focused on the authority of the commissioner judge as a whole as a substitute for the pretrial institution, namely the journal commissioner judges and *Miscarriage Of Justice* in the Criminal Justice System⁶ and the existence of commissioner judges in the criminal justice system⁷. However, in this study, the authors try to dissect the enforcement of the exclusionary rules principle that will be implemented by the commissioner judge / preliminary examiner. It is because, with the enforcement of the principle of exclusionary rules, a fair trial will be realized. Then,

Jurnal Hukum Dan Peradilan 6, no. 3 (2017): 421, <https://doi.org/10.25216/jhp.6.3.2017.421-446>.

² Rahmat Efendy Al Amin Siregar, "Due Process of Law Dalam Sistem Peradilan Pidana Di Indonesia Kaitannya Dengan Perlindungan Ham," *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 1, no. 1 (2016): 35, <https://doi.org/10.24952/fitrah.v1i1.326>.

³ Andi Hamzah and RM EQ SURACHMAN, *PRE-TRIAL JUSTICE & DISCRETIONARY JUSTICE Dalam KUHAP Berbagai Negara*, ed. Tarmizi (Jakarta: Sinar Grafika, 2015).

⁴ Riki Perdana Raya Waruru, "Praperadilan Pasca 4 Putusan Mk," Mahkamah Agung Republik Indonesia, 2015, https://kepaniteraan.mahkamahagung.go.id/images/artikel/praperadilan_pasca_4_putusan_mk.pdf, Diakses Pada 15 Maret 2022.

⁵ "Naskah Akademik RUU Tentang Hukum Acara Pidana," 2010.

⁶ I Wayan Gede Rumeaga, "Hakim Komisaris Dan Miscarriage of Justice Dalam Sistem Peradilan Pidana," *Jurnal Penelitian Hukum De Jure* 19, no. 1 (2019): 53, <https://doi.org/10.30641/dejure.2019.v19.53-68>.

⁷ Puteri Hikmawati, "EKSISTENSI HAKIM KOMISARIS DALAM SISTEM PERADILAN PIDANA (Analisis Terhadap RUU Tentang Hukum Acara Pidana)," 2013.

the protection of human rights (HAM), such as a goal of *HAP*, can be achieved so that cases that occur due to the non-enforcement of exclusionary rules, namely the many allegations of case engineering carried out by law enforcement officials (*APH*)⁸, based on information from *Kontras* in the media *tirto.id* during 2019-2022, in approximately three years, there were 27 allegations of case engineering committed by the Police spread across 15 provinces in Indonesia. This must be seen as an iceberg phenomenon because the media⁹. do not reveal many cases engineered by Police members in the field.

Furthermore, since there is no feature in the current Criminal Procedure Law for the enforcement of exclusionary rules, through this study, the author tries to explain;

- a. What is the concept of the role of the commissioner judge in enforcing the exclusionary rules principle?
- b. What is the role of the preliminary examination judge in achieving the objectives of Criminal Procedure Law that guarantees human rights?

METHOD

The study of law is conducted to solve legal issues that arise. Also, there are several approaches used, such as the statute approach, case approach, historical approach, comparative approach, and conceptual approach¹⁰. Then, the author uses the statute approach to compare the pretrial provisions in the current KUHAP and the draft of the future RUU KUHAP related to preliminary examination judges or commissioner judge. Then, the author also used a comparative approach to compare the exclusionary rules principle, which is found in the United States, and the commissioner judge rule, found in the Netherlands. Further, the historical approach was used to find out the history of the formation of KUHAP and a conceptual approach that leads to the proposed concept of a preliminary examination judge or commissioner judge who will replace the role of the pretrial in order to realize the establishment of the exclusionary rule's principle.

DISCUSSION

A. The Role of The Commissioner Judge in Enforcing The Exclusionary Rule Principle

The formal criminal law is a means to seek the truth of criminal code procedure (*KUHAP*) and guarantee human rights in forced efforts by *APH*. One example is in the formal criminal law of the United States. When the police make forced arrests, the police explain the *Miranda right*, such as: "You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer questions now without a lawyer present, you have the right to stop answering at any time. By providing

⁸ "<https://Kontras.Org/2014/01/12/Polri-Hentikan-Rekayasa-Kasus/>," n.d.

⁹ "https://Tirto.Id/Data-Kontras-Polisi-Diduga-Rekayasa-27-Kasus-Sepanjang-2019-2022-GvSF," n.d.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 2017th ed. (Jakarta: Kencana, 2017).

information regarding the rights obtained by suspects when forced arrest and detention are carried out, *APH* are making efforts to uphold human rights such as the right to self-defense, the right to be examined without using violence, the right to contact a lawyer, the right to obtain legal assistance. Unfortunately, in Indonesia, there is no *Miranda right*. There is a procedure that can be used by the suspect to demand forced efforts by investigators, namely pretrial procedures.

Pretrials are established with noble functions and objectives, namely, to protect suspects' rights based on the human rights principle. This is to avoid the forced efforts of investigators in the form of arrest, detention, confiscation, or search carried out illegally and against the law. This authority is not by the law. It can be requested for examination by the suspect through the pretrial process to examine the validity of the detention process and the forced efforts made by the investigator. Even the suspect, through the pretrial process, can register and sign a request for material loss or restoration of circumstances if it turns out that the detention or other forced efforts are proven to be incorrect and do not follow procedural law¹¹. This aligns with the principle of *Habeas Corpus* rights, namely the right given to a person or individual to fight against acts of coercion carried out by investigators through a preliminary examination process in court, often referred to through the pretrial process¹².

At first, pretrials were obtained from the concept of the Commissioner Judge Institution listed in the formal law specifically for groups / European *Strafvoerdering* (Sv), which is regulated in the second part. It aims to be a supervisor in charge of carrying out supervision of coercive actions by law enforcement officials (police/investigators), such as coercive efforts to arrest, detention, search, and seize personal belongings and examination documents, which are later judged to be valid or null by *Van de register-commissaries*. Then, the concept of a pure commissioner judge was initially ignored because it was considered to retard the criminal justice process, so the concept of a pure commissioner judge turned into a pretrial. However, in the concept of the Criminal Procedure Bill recently, the idea was raised again to change the pretrial to a Commissioner Judge where the concept of the preliminary examining judge is contained in the concept of the Criminal Procedure Bill, the commissioner judge in the Criminal Procedure Bill also actually only expands the scope of authority and detaches from the district court institution, not changing it to a judge who is actively present and supervises the investigation process¹³.

Commissioner Judge, which is found in the formal criminal law for the European group *Strafvoerdering* (Sv), is then taken back to the concept of *KUHAP* draft to become a commissioner judge, which aims to protect and guarantee the human rights of suspects when involved in the stages of forced efforts carried out by investigators and other *APH* who are authorized by statutory provisions to carry out forced efforts. The rationale for the birth of the commissioner judge concept is inseparable from the fundamental function of

¹¹ Sahri Sebayang, "Praperadilan Sebagai Salah Satu Upaya Perlindungan Hak-Hak Tersangka Dalam Pemeriksaan Di Tingkat Penyidikan (Studi Pengadilan Negeri Medan)," *Jurnal Hukum Kaidah* 18, No. 1 (2015): 83–101.

¹² Andi Bau Malarangeng, "Solusi Praperadilan Oleh Hakim Komisaris Berdasarkan Ruu Kuhap," *Pandecta: Research Law Journal* 7, No. 1 (2012).

¹³ "Rancangan Undang-Undang Tentang Hukum Acara Pidana," *Negara Hukum* 5 No 1 (2014): 31–46.

Indonesian formal criminal law, namely seeking the truth of *KUHAP* by upholding human rights.

In 1974, the term "Commissioner Judge" was proposed in the concept of criminal procedure law (*HAP*) reform in draft form to the House of Representatives of the Republic of Indonesia (*DPR RI*) when Oemar Seno Adji was then the minister of justice. The role and authority of the commissioner judge are almost the same as those of the current Pretrial institution. The difference lies in supervising the trial process at the investigator and prosecutor levels to seek material truth. However, in the current *KUHAP* draft, the role of the commissioner judge is limited to assessment (based on requests from the suspect and prosecution). It is not actively involved in overseeing the process of coercive measures by investigators.

Commissioner Judge, in the concept of *KUHAP* draft has similar powers to pretrial judges with the current. However, there is a difference in authority, namely in determining or deciding that evidence or statements obtained illegally cannot be used as evidence. The concept lines with the exclusionary rules principle that known in legal doctrine in the United States, which means that evidence obtained violating the law cannot be used in a trial. This principle protects the public interest from police conducting searches or entering private property without a warrant from a judge¹⁴.

The exclusionary rules principle needs to be reaffirmed in Indonesian *HAP*, even though it is related to the acquisition of suspect testimony. It has been regulated in Chapter VI, Articles 50 to 68 of *KUHAP*. However, in practice, authority is often abused to obtain evidence. Data from the Commission for *Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (Kontras)* shows that there were forty cases of torture by investigators between June 2019 and May 2020 throughout Indonesia. Acts of torture or intimidation are carried out to obtain confessions from suspects, especially by the police as investigators. Witness testimony resulting from such actions is evidence derived from illegal or unauthorized actions, violating the rights of suspects and defendants regulated in Chapter VI, Articles 50-68 of the Criminal Procedure Code¹⁵. This principle in the United States protects the people's interests from police searches or entry onto private property without a warrant from a district judge¹⁶.

Criminal code procedures (*KUHAP*), have not regulated the procedures of law enforcement officials in obtaining valid evidence. During the judicial process, it is not ruled out when illegally obtained evidence is found in the trial. However, there are rules for investigators not to examine suspects in closed rooms. Then, some regulations prohibit investigators from pursuing confessions in inelegant ways. Then, in the draft Criminal Procedure Bill in Article 175 of the Criminal Procedure Code, it has been regulated regarding the concept of Exclusionary Rules found in United States. The criminal justice system using Exclusionary Rules has existed since 1914 there, the 4th Amendment to their constitution. In the United States, 4 (four) things are prohibited in the process of obtaining evidence, namely:

- a. The witness statements obtained by law enforcement officers unlawfully;

¹⁴ Adam Ilyas, "Praktik Penerapan Exclusionary Rules Di Indonesia," *Masalah-Masalah Hukum* 50, no. 1 (2021): 49–59, <https://doi.org/10.14710/mmh.50.1.2021.49-59>.

¹⁵ Adam Ilyas, "Praktik Penerapan Exclusionary Rules Di Indonesia," *Masalah-Masalah Hukum* 50, No. 1 (2021): 49–59, <https://doi.org/10.14710/mmh.50.1.2021.49-59>.

¹⁶ M Latifah, "Perluah Mengatur Prinsip Exclusionary Rules Of Evidence Dalam Ruu Hukum Acara Pidana?(Should We Regulate Exclusionary Rule Principle In The Criminal ..., " ... *Hukum: Membangun Hukum Untuk Keadilan Dan ...*, 2021, 101–22, <https://dprexternal3.dpr.go.id/index.php/hukum/article/view/2123>.

- b. witness statements obtained by law enforcement officers by not complying with the Fifth and Sixth Amendment provisions relating to the principle that the suspect or defendant has the right to provide statement that does not incriminate him (defence);
- c. Procedures for forced searches and forced confiscation carried out by law enforcement institutions or agencies are contrary to the provisions of the Fourth Amendment relating to the protection of property rights;
- d. The procedure for obtaining evidence found or obtained by law enforcement officers can violate *HAM* principle of Due Process of Law¹⁷.

Formal criminal law in the United States uses the exclusion of illegally obtained evidence continuously. However, the principle of exclusionary rules is only sometimes applied because there is a doctrine of good faith. The exclusionary rules are limited by the doctrine of good faith in order to preserve illegally obtained evidence¹⁸.

The author argues that the concept of the authority of the commissioner judge who decides whether or not the process of obtaining evidence by the Investigator is a legal reform that can protect the suspect. The intended protection is from abuse of authority by the Investigator and by making the commissioner judge institution separate (outside the District Court institution). It is hoped that the commissioner judge can work optimally to assess the validity of the coercive efforts made by the police and maintain human rights as a suspect, namely the right to a fair trial and freedom from the engineering of law enforcement officials.

Exclusionary Rules are not only a principle that binds witness statements but evidence broadly, including illegally obtaining electronic evidence, confiscating private property, permission to enter the territory of private property, and the combination of the concept of commissioner judges. Then, Exclusionary Rules are expected to protect the public against the actions of *APH* who are contrary to the law.

The concept of commissioner judges should be realized immediately because it is to pursue the lagging law. The law aimed at retaliation is no longer relevant because the law to foster and protect society is relevant. This prevents formal criminal law from being used as a tool by the state to pressurize and intimidate the people but as a means of seeking justice and truth.

B. The Role of Commissioner Judges To Guarantee The Human Rights

History records that the first Commissioner Judges emerged through the procedural law for the European group *Strafvoerdering* (Sv) provisions on *Van de regter commissaris*. The commissioner judge can act like an executive, which means that they can summon and come to the house of a witness or suspect and carry out temporary detention¹⁹. The concept of *HAP* requires the commissioner judge to be active and hold full responsibility in terms of supervision, starting at the initial examination level of a criminal case. The purpose of the existence of commissioner judges is to provide more protection to all the rights of individuals who are suspected perpetrators at the criminal examination stage. The existence of a preliminary examination judge has a role in limiting and preventing disagreements on

¹⁷ Ilyas, "Praktik Penerapan Exclusionary Rules Di Indonesia."

¹⁸ Raja Yuhaini Et Al., "Exclusionary Rules Dalam Tahap Pembuktian Di Pengadilan Guna Memperoleh Alat Bukti Yang Sah," *Pusat Jurnal Ilmiah Umrah*, No. 3 (2022): 838–47.

¹⁹ Kata Pengantar, Kepala Badan, And Pembinaan Hukum, "Reglement Op De *Strafvoerdering*," 2005.

the legal validity of every legal step and action at the preliminary examination stage. It includes the validity of searches, arrests, detentions, and seizures, as these legal actions relate to the inherent human rights of individuals subject to the law as perpetrators, including their freedom and property rights that need to be protected to implement fair trial in Indonesia.

Implementing justice is a responsibility inherent in every state administrator without exception related to law enforcement and is a fundamental right that must be granted by the state to suspects. Further, legal actions by suspects which result in violations of their rights must refer to all laws or written laws in principle that must determine absolute requirements²⁰.

The commissioner judge is not found in the provisions of *HIR Staatsblad* No. 44 of 1941. During Indonesia's independence on August 17, 1945, the State of Indonesia again used the HIR as a guideline in examining criminal cases so that practically the preliminary examination judge was no longer included in the procedural law, the control carried out at the dismissal stage of the process in the historical Criminal procedure was carried out by the Commissioner Judge, the aim is to oversee the use of authority in the process of investigation, investigation, and prosecution by investigators and public prosecutors.

It can be seen in the verdicts of Budi Gunawan and the chairman of the House of Representatives of the Republic of Indonesia, Setya Novanto, where they were found not guilty in pre-trial proceedings. In contrast to other cases, such as the case of the late Sutan Batugana, the judge rejected his pre-trial petition. A decision that has gone viral and caused turmoil is decision No. 04/Pid.Prap/2015/PN.JKT.SEL by the applicant commissioner, Drs. Gunawan, SR Msi against the Corruption Eradication Commission (KPK) for being named a suspect. The decision caused controversy and protests from many legal experts, resulting in Sarpin being questioned as the judge then.

The main focus is that the suspect/defendant, in accordance with the legal principles in the Criminal Procedure Code, must be considered innocent until proof of guilt is established at the stage of law enforcement that is *inkrahct van gewijsde*²¹. Pretrial institutions with a form of supervision mechanism directly object to a law enforcement procedure with the capital "guarantee of human rights protection". On the other hand, the Constitutional Court's decision is a severe problem for *APH* who dare to play with their authority. Pretrials are like two sides of a coin; they have advantages and disadvantages. One is that they deny the principles contained in Indonesian criminal procedure law, such as denying the principle of fast, simple, and low-cost law.

Pretrial charges are established by *HAP* to ensure the protection of human rights so that officers are more careful in carrying out their duties and obligations consequently. A criminal justice system implemented by prioritizing the ideals of "due process of law" is transformed into a proper and fair trial. A fair legal process implies respect for the rights of citizens even though the community is the perpetrator of the criminal offence itself.²² Implementing due process of law means that all government actions through the instrument of law enforcement agencies must be based on statutory regulations. If we relate them to

²⁰ K Rahman, "Problem Pengaturan Upaya Paksa Penangkapan Terhadap Pelaku Tindak Pidana Narkotika," *Jurnal Hukum Ius Quia Iustum*, 2020.

²¹ A Kartadinata, "Pembaharuan Hukum Pidana Terhadap Pertimbangan Hakim Praperadilan," *Viva Themis: Jurnal Ilmu Hukum Dan Humaniora*, 2023.

²² Z J Fernando, "Due Process Of Law Dalam Penanggulangan Tindak Pidana Di Indonesia," *Journals.Unihaz.Ac.Id*, N.D.

law enforcement, justice and human rights are complicated to realize because, in society itself, many problems still need to be resolved by the state.

Pancasila, as one of the foundations of law, places humanity and justice as very important and strategic. It reflects the implementation of fair and civilized human values and social justice for all Indonesians. In this context, we must regulate the rights of suspects/defendants and introduce remedial mechanisms if these rights are violated. In addition, structuring the principles upon which *HAP* also has a crucial role. Due process of law demands a practice that utilizes universal principles at all stages of the current criminal justice system. Overall, law enforcement aims to ensure legal certainty, order, and protection of the law as it is currently (in 5.0) implemented. In order to achieve this, various structures and dimensions of legal life must always be balanced and in harmony with a morality based on the values of a civilized society. The implementation of justice must be maintained through the criminal justice system²³.

Criminal law enforcement as a process must be seen with realism, and it must be recognized that this process has complexities and limitations that must be faced. Therefore, actual enforcement must be seen as a form of discretion that needs to be faced due to certain limitations. In reality, criminal law enforcement often faces various challenges, including limited human, financial, and technological resources, which can affect the ability of *APH* to handle all cases of crime. Complexity Criminal cases require complex investigations and considerable time to gather evidence and ensure justice. external factors and issues of law and interpretation there are sometimes ambiguities or differences in interpretation that pose challenges to law enforcement.

Furthermore, In facing those limitations, law enforcement officers must use discretion wisely to prioritize cases that require more urgent handling and seek efficient ways of enforcing the law. The ultimate goal is to ensure justice, protection and legal certainty for the entire community.

Then, there is a need for a supervisory institution at the pre-trial stage to guarantee and maintain "fair" treatment and prioritize the human rights of suspects and defendants. Fair treatment of suspects/defendants is an absolute and inalienable right, following the principle of fair trial.

In criminal code procedure (*KUHAP*), the institution authorized to oversee the first instance or pretrial stage is generally the pretrial institution. However, this institution has weaknesses. Firstly, the pretrial institution is passive because it only responds to requests from the public and cannot focus professionally on examining pretrial requests because its main task is to examine the main criminal case. In addition, there is a tendency to apply too subjective instruments, resulting in ineffective supervision of the preliminary examiner.

Suppose it is chosen to use commissioner judges based on the concept of the Criminal Procedure Law Draft Law relating to preliminary examination judges. In that case, this will change the structure of the criminal justice system. Therefore, a supervisory institution is needed at the pretrial stage for all authorities possessed by the police and prosecutors, especially in using acts of authority and forced efforts to collect evidence used in the arrest and indictment of a person using pre-trial institutions. The pretrial judge must have a passive and active role, as well as be professional in monitoring the pretrial stages, carrying out examinations and deciding on requests for testing under the authority of the

²³ E R M Surachman, *Eksistensi Kejaksaan: Dalam Konstitusi Di Berbagai Negara (Edisi Kedua)* (Books.Google.Com, 2022).

police and prosecutors who, on the initiative, have indications of the judge's permission to carry out coercive measures that are misused. The preliminary examining or commissioner judge is responsible for screening cases categorized as criminal acts and must be submitted to the court to safeguard suspects' human rights.

There needs to be a more detailed regulation of the authority of commissioner judges so as not to conflict with other legal principles. It is essential to maintain consistency and clarity in the implementation of the criminal justice system. More detailed arrangements can establish clear boundaries regarding the authority of commissioner judges, including the scope and limits of exercising their authority. Detailed arrangements will help minimize the risk of abuse of authority or overlap with other legal principles, thus ensuring consistency and fairness in the justice system.

In addition, more detailed arrangements will also provide clear guidelines for commissioner judges in carrying out their duties. By having clear guidelines, commissioner judges can make appropriate decisions following the law, thus preventing uncertainty or unfairness in the judicial process. It is important to note that more detailed arrangements aim to maintain the authority of commissioner judges. They provide clear guidance instead and ensure that such authority is used appropriately and in line with the principles of criminal procedure law.

More detailed arrangements could cover various aspects, such as limitations on coercive measures, determination of acceptable standards of evidence, regulation of internal and external oversight mechanisms for commissioner judges, and regulation of transparent and open decision-making. Thus, a more detailed regulation of the authority of commissioner judges will ensure consistency, fairness, and compatibility with other legal principles in the criminal justice system. It is reflected in Article 111, paragraph (1) of the Draft Criminal Procedure Code²⁴.

In Indonesia's criminal justice system, considering the appropriate form of oversight, institutions need to consider Indonesia's financial capacity and geographical conditions. In this context, several options could be considered. Pretrial institution development Although the current one has weaknesses, particularly in passivity and limited concentration on pretrial motions, there is room for development. Through reforms and increased effectiveness, pretrial institutions can be strengthened and more active in supervisory functions at the preliminary stage. It could involve increasing the number of pretrial judges, increasing capacity, and improving working procedures to make them more efficient and effective. Establishment of an Oversight Body Consider establishing an independent oversight body dedicated to monitoring the criminal justice process. This body could oversee investigators, prosecutors and judges at the preliminary stage, focusing on the use of authority, protection of human rights and fairness of treatment. This institution should have sufficient independence, credibility and authority to perform its duties.

It is necessary to strengthen internal oversight in addition to external agencies, and it is also essential to strengthen internal oversight within criminal justice institutions. It can be done through improving internal oversight and accountability mechanisms, such as inspectorates, ethical complaints, and performance evaluations. This strengthening can help reduce violations and abuse of power in criminal justice practices.

The choice between the above options should consider Indonesia's specific

²⁴ E H Purwanto, "Potensi Gugatan Pra Peradilan Sebagai Upaya Menghalangi Proses Penyidikan Tindak Pidana Korupsi," *Legal Spirit*, 2021.

conditions and needs, including the availability of human resources, budget, and existing legal infrastructure. In addition, participation and consultation with various stakeholders, including judges, academics, legal practitioners and civil society, is essential to formulate solutions best suited to the Indonesian context.

In reforming *HAP*, it is essential to maintain alignment between supervisory judges and criminal procedure principles. Supervisory judges are tasked with overseeing and monitoring the criminal justice process, while the principles of criminal procedure provide the framework that governs the judicial process. The following are some principles that can maintain harmony between supervisory judges and criminal procedure principles. Independence of the Supervisory Judge: Supervisory judges must have independence and freedom in their duties. They should not be influenced by external interests or pressure from other parties. In this case, the principles of criminal procedure that emphasize the freedom and independence of judges in carrying out their duties are essential.

Supervisors must follow and apply the principles of *HAP* in every decision and action taken. They must ensure that investigators, public prosecutors, and judges act according to applicable legal provisions. It will ensure that the criminal justice process is conducted relatively and following legal principles. It is essential to provide adequate education and training to future supervisory judges. They must have a good understanding of the principles of criminal procedure and changes in the law. Then, it will enable them to carry out their supervisory duties competently and in line with legal principles.

Supervisory judges must establish good coordination and cooperation with related parties, such as investigators, public prosecutors, and judges in charge of the criminal justice process. It will facilitate mutual understanding and collaboration in carrying out supervisory duties, which align with the principles of *AHP*. Efforts should be made to ensure that supervisory judges have a clear role and are regulated in sufficient detail in the criminal procedure code. It will help maintain harmony between supervisory judges and criminal procedure principles and strengthen a fair, transparent, and accountable criminal justice system.

In the context of *AHP*, the role of the supervising judge may vary depending on the criminal justice regulations in a particular country. Further, some criminal justice systems allow supervisory judges to be more active, while others may be more passive. In criminal justice systems where supervisory judges have a more active role, supervisory judges can be directly involved in the preliminary or pretrial examination and supervision process. They can hear pretrial motions, decide on the legality of police and prosecutorial powers, and examine the investigation and prosecution conducted by the police and prosecutors. In this regard, supervisory judges have the authority to supervise and control the steps of investigation and prosecution to protect individual rights and compliance with legal principles.

Some systems give supervisory judges a more passive role. For instance, supervisory judges only receive and examine pretrial motions filed by interested parties without being actively involved in the investigation or prosecution stages. Legal reform could regulate the role of supervisory judges more clearly and in detail, including their activeness or passivity in the criminal justice process. The aim is to ensure the protection of individual rights, compliance with legal principles, and the effectiveness of the criminal justice system²⁵.

Thus, at the pretrial stage, as mentioned in the previous statement, there is a need for

²⁵ P R Siagian Et Al., "Tinjauan Yuridis Tentang Larangan Pengajuan Praperadilan Oleh Orang Yang Berstatus Daftar Pencarian Orang (DPO)," *Iuris Studia: Jurnal ...*, 2021.

a supervisory institution that can oversee the use of authority by investigators and public prosecutors. This is important to protect the human rights of suspects/defendants, compliance with legal principles, and fairness in the criminal justice process. Currently, the institution that conducts supervision at the pretrial stage in Indonesia is the pretrial institution. However, the previous statement also mentioned that the pretrial institution has weaknesses, such as the tendency to be passive, unprofessional, and less effective in conducting supervision at the preliminary examination stage. In this context, the concept of commissioner judges in the Draft Law on Criminal Procedure (RUU KUHAP) is an alternative that needs to be considered. The commissioner judge is proposed as a supervisory institution that can conduct more active oversight of the use of authority by investigators and public prosecutors at the pretrial stage. The regulation of commissioner judges in the *KUHAP* draft aims to change the order of the criminal justice system, correct existing weaknesses, and better ensure the protection of individual rights and compliance with legal principles. The commissioner judge is expected to have a professional role and is mandated or tasked to carry out control and monitoring at the pretrial stage, including examining and deciding on requests to test the validity of the use of the authority of investigators and public prosecutors. The selection of an appropriate oversight institution needs to consider an evaluation of the strengths and weaknesses of the current pretrial institution and the concept of commissioner judges in the draft Criminal Procedure Code. The aim is to improve the supervisory system at the pretrial stage, maintain compliance with legal principles, and ensure the protection of individual rights in the criminal justice process in Indonesia²⁶.

Furthermore, article 111 section (1) of the Draft Law on Criminal Procedure (RUU KUHAP) shows that the active stance of commissioner judges differs from the passive stance of pretrial judges. The commissioner judge has an active role in supervision, while the pretrial judge has a passive attitude and is not allowed to be actively involved. Therefore, it is essential to regulate the use of the commissioner judge's authority in more detail so that it does not conflict with other legal principles intended to be upheld through the establishment of commissioner judges and other legal principles regulated in *HAP*.

CONCLUSION

The combination of the concept of Commissioner Judge and the Exclusionary Rule principle is indispensable for the development of formal criminal law in Indonesia. Because the current formal criminal law pays less attention to the human rights side, the coercive efforts made by investigators or other law enforcement officials (*AHP*) cannot be prosecuted to the fullest. Therefore, a new institution is needed that can supervise coercive efforts by law enforcement officials. The existence of a commissioner judge is expected to achieve the objectives of *HAP* that protects and guarantees the interests of human rights (due process of law) in order to carry out a fair trial and seek material truth or the absolute truth. Furthermore, the guarantee of protection of the rights of suspects/defendants at the preliminary examination stage is part of the function of *HAP*. The control of pretrial and preprosecution institutions is different. However, it has the same purpose: to control the use of the authority of investigators and public prosecutors in a criminal justice system that upholds human rights.

²⁶ D Kripsiaji And N B Minarno, "Perluasan Kewenangan Dan Penegakan Hukum Praperadilan Di Indonesia Dan Belanda," *Al-Mazaahib: Jurnal Perbandingan Hukum* (Core.Ac.Uk, N.D.).

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