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URGENCY OF EXCLUSIONARY RULES REGULATION IN INDONESIAN CRIMINAL JUSTICE SYSTEM

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Abstract
This research departs from the legal gap related to the application of the Exclusionary Rules of Evidence principle in Indonesia. Currently, there is no explicit regulation that prohibits the use of evidence obtained unlawfully, such as through torture, threats, or pressure on suspects. This kind of practice is often carried out by law enforcement officials to obtain a confession from a suspect and continue the case to trial. Without a clear legal mechanism, illegal evidence is often used, which not only harms the rights of suspects, but also undermines the principles of justice, weakens legal protection, and damages the image of the judiciary in the eyes of the public. This legal vacuum results in human rights violations continuing to occur without strict sanctions against the perpetrators of violations. This research uses normative juridical method with statutory, conceptual, case, and comparative approaches. Analysis is conducted through systematic and grammatical interpretation of primary, secondary, and tertiary legal materials. The results show the urgency of regulating the Exclusionary Rules principle in KUHAP to ensure that only legally obtained evidence can be used in court. As a regulatory model, Indonesia can adopt the provisions of Article 359a paragraph (1) letter b of the Dutch Wetboek van Strafvordering (WvSv), which provides an explicit mechanism to exclude illegal evidence. The implementation of this principle will strengthen the protection of human rights, ensure a fair trial process, and increase the accountability and professionalism of law enforcement officers in carrying out their duties.

Keywords: Exclusionary rules of evidence; legal protection; suspects..

1. Introduction

The investigation process in the Indonesian criminal justice system often raises serious issues related to the protection of human rights. Suspects arrested by the police have the right to be examined in accordance with Article 50 of the Criminal Procedure Code (KUHAP), which stipulates that the suspect has the right to be immediately examined by the investigator, forwarded to the public prosecutor, and the case immediately submitted to the court. However, the implementation of this provision is often characterized by unfair practices, including physical or psychological violence against suspects, in order to accelerate the confession of alleged criminal acts that are not necessarily legally proven. This is contrary to the principle of presumption of innocence, as stated in Article 8 paragraph (1) of Law No. 48/2009 on Judicial Power, which states that every person suspected or charged with a criminal offense shall be presumed innocent until a court decision is legally binding.

Furthermore, KUHAP is designed based on the principle of due process of law to ensure the fairness of the legal process. This principle includes the suspect's right not to be coerced into providing testimony as stipulated in Article 52 of KUHAP, which states that suspects must be treated humanely. The police, as law enforcement officers, have a responsibility to protect the rights of suspects. Law No. 2 of 2002 on the Indonesian National Police, Article 5 paragraph (1), emphasizes that the police function is to provide protection and protection to the community, including suspects. However, in practice, torture of suspects often occurs during the investigation stage. (Tiara et al. 2017, p. 38). However, reality shows that this right is often ignored. The LBH Jakarta survey (2013-2016) recorded 37 cases of torture against suspects, while the Kontras report (2023-2024) identified 15 cases of wrongful arrest with 23 victims, of which nine experienced physical violence (Wiryono & Rastika, 2017). (Wiryono & Rastika, 2024). reflect systematic violations of human rights.

Human rights and protection of suspects, from a human rights perspective, suspects who are undergoing legal proceedings still have inherent human rights. According to Jan Materson, human rights are rights inherent in humans, without which humans cannot live in dignity. This is in line with Article 2 of Law No. 39/1999 on Human Rights, which affirms that the Indonesian state recognizes, respects and protects the human rights of every citizen, including those who are facing legal proceedings. Acts of torture by law enforcement officers not only violate the rights of suspects, but also violate the principle of due process of law, which is a fair legal process. The human rights attached to suspects include fundamental rights such as the right not to be tortured, the right to a fair trial, and the right to defend oneself before the law. This is affirmed in Article 5 paragraph (1) and Article 6 of Law No. 39/1999, which stipulates that everyone, including those who are suspects or accused, is entitled to recognition, guarantees, protection, and fair legal certainty. This principle is also reflected in various international instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified through Law Number 12 of 2005. However, although the guarantee of human rights protection has been explicitly regulated in the law, its implementation in the field still faces various challenges. One of them is the high number of violations against suspects during the investigation process. Data from LBH Jakarta (2013-2016) shows that violence against suspects, including physical and psychological torture, still occurs frequently, especially in closed environments such as police stations. In this context, suspects often do not have access to lawyers or legal counsel who can protect their rights, even though Article 56 of KUHAP stipulates that suspects are entitled to legal assistance from the investigation stage.

Furthermore, acts of torture by law enforcement officials are contrary to the Indonesian constitution, specifically Article 28G paragraph (2) of the 1945 Constitution, which states that everyone has the right to protection from the threat of torture. In addition, Article 33 paragraph (1) of Law Number 39 Year 1999 expressly prohibits acts

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of torture or inhumane treatment by anyone, including state apparatus. In the case of violations, the officials involved should be subject to criminal sanctions based on applicable legal provisions, as stipulated in Article 351 of the Criminal Code (KUHP) on persecution.

This situation suggests the need for a more effective mechanism to protect the human rights of suspects during the legal process. One solution that can be implemented is to increase oversight of the actions of law enforcement officials, both through independent institutions such as Komnas HAM and through strengthening internal police mechanisms. In addition, preventive measures such as special training for police officers on the principles of human rights and due process of law are needed.

Protecting the rights of suspects should also include easier access to legal aid. In many cases, limited access to lawyers means that suspects cannot optimally defend themselves, increasing their vulnerability to torture or unfair treatment. For this reason, the implementation of free legal aid services as stipulated in Law No. 16/2011 on Legal Aid needs to be optimized, especially for suspects from poor communities who cannot afford a lawyer.

Ultimately, protecting the human rights of suspects is not only important to maintain the integrity of the legal process, but also to ensure that substantive justice is achieved. A criminal justice system that ignores human rights not only undermines the principle of the rule of law (rechtstaat), but can also undermine public confidence in law enforcement institutions.

Another issue that arises is the acquisition of evidence unlawfully. According to R. Atang R in his book Criminal Procedure Law: An Introduction, valid evidence is evidence that is relevant to the criminal act and can lead to the judge's belief in the truth of a criminal act. (Ranoemihardja, 1980, p. 32).. KUHAP, through Article 184, regulates the types of valid evidence, including witness testimony, expert testimony, letters, instructions, and testimony of the defendant. However, the definition of 'valid' in the collection of evidence is not specifically outlined, giving rise to ambiguity.

Judges, based on Article 183 of the Criminal Procedure Code, cannot impose punishment if there are not at least two valid pieces of evidence. However, in practice, evidence is often obtained by unlawful means, such as torture or intimidation of suspects. This action is contrary to the principle of the right of due process, namely that investigations and inquiries must be carried out in accordance with the applicable procedural law. (Republic of Indonesia, 1981).

The Exclusionary Rules Principle and its Urgency in Indonesia, first introduced through the Mapp v. Ohio decision in the United States, states that evidence obtained unconstitutionally or unlawfully cannot be used in court.(Leckie, 1997, p. 264).. This principle is based on the Fourth Amendment of the US Constitution, which protects the public from unlawful searches and seizures. This principle is also reinforced by the fruit of the poisonous tree doctrine, which states that evidence derived from illegal sources is considered tainted and inadmissible in court. Thus, exclusionary rules not only serve as a tool to protect the rights of individuals, but also to encourage compliance by law enforcement officials with the applicable rule of law.

The application of exclusionary rules has a strong basis in legal theory. One of the justifications is to prevent deterrence rationale. By excluding unlawfully obtained evidence, this principle ensures that law enforcement officers do not benefit from unlawful acts. In addition, exclusionary rules also reflect the principle of procedural fairness, where a fair legal process is considered as important as the final outcome of the process.

Some civil law countries, such as the Netherlands, have adopted the principle of exclusionary rules to exclude unlawfully obtained evidence. In the Dutch legal system, Article 359a paragraph (1) letter b of the Wetboek van Strafvordering regulates the mechanism to exclude unlawfully obtained evidence. Dutch courts consider several factors before excluding evidence, including the extent of the offense committed by the law enforcement officer and its effect on the fairness of the case. For example, if the offense was committed intentionally or resulted in serious harm to individual rights, then the evidence will almost certainly be excluded.

Other countries have similar approaches. In Germany, the principle of Beweisverwertungsverbot (prohibition on the use of evidence) allows courts to exclude evidence obtained in violation of the law. This approach not only protects the rights of the suspect but also maintains the integrity of the legal system itself. In Canada, a similar arrangement is contained in Article 24(2) of the Canadian Charter of Rights and Freedoms, which authorizes courts to exclude evidence obtained in violation of an individual's constitutional rights.

Indonesia, as a state of law, can learn from the experience of these countries. Currently, KUHAP has not explicitly regulated the principle of exclusionary rules. In fact, this regulation is very important to protect the rights of suspects, prevent violations of the law by law enforcement officials, and ensure that the legal process runs in accordance with the principle of due process of law. Without this principle, evidence obtained through torture, threats, or other unlawful acts can still be used in court, which not only harms the suspect but also weakens public confidence in the criminal justice system.

In the Indonesian context, this principle is relevant to apply given the high number of reports of violations committed by law enforcement officials in the investigation process. Data from the Commission for the Disappeared and Victims of Violence (Kontras) shows that during 2023-2024, there were 15 cases of wrongful arrest accompanied by torture. In this situation, the application of exclusionary rules will be an important step to encourage accountability of the authorities and strengthen legal protection for suspects.

In addition, the application of exclusionary rules will also have a positive impact on the justice system as a whole. By excluding unlawfully obtained evidence, the Indonesian justice system can establish clearer and more transparent legal standards. This will also force law enforcement officials to improve their professionalism and adhere to the rule of law.

However, the application of the exclusionary rules principle in Indonesia needs to be accompanied by systemic changes in the KUHAP. One of the first steps that can be taken is to introduce a judicial review mechanism for the evidence in question. This mechanism allows judges to assess the validity of evidence before it is used in court. In addition, there needs to be intensive training for law enforcement officials on human rights principles and legal procedures. This approach will not only improve the quality of investigations but also ensure that the rights of suspects are maximally protected. Until now, KUHAP has not explicitly regulated the principle of exclusionary rules, although this regulation is very important to protect the rights of suspects and prevent violations of the law by law enforcement officials. By adopting the exclusionary rules principle, Indonesia can ensure that evidence used in court is actually obtained legally and according to procedures, thus ensuring justice for all parties involved in the criminal justice system.

The purpose of this article is to analyze the protection of human rights of suspects in the Indonesian criminal justice system, with a specific focus on the principle of exclusionary rules. The study aims to highlight existing shortcomings in the legal framework, address the challenges in the practical implementation of human rights protections during investigations, and propose reforms to the Criminal Procedure Code (KUHAP) to ensure compliance with international human rights standards. The author recommends reforming the KUHAP by incorporating the exclusionary rules principle as an integral part of the Indonesian criminal procedure law system. This step will not only increase the accountability of law enforcement officials, but also strengthen the protection of human rights in the criminal justice process.

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2. Materials and Methods

TThe type of research that researchers use is in the form of normative juridical research, which is research that focuses on examining the application of positive legal rules or norms. (Suyanto, 2023, p. 2). The research approach used includes several relevant types (Rifa'i et al., 2023, p. 9).. A statutory approach was taken to examine laws and regulations relating to the criminal justice system in Indonesia, such as the Criminal Procedure Code (KUHAP), Law No. 48/2009 on Judicial Power, and Law No. 39/1999 on Human Rights. A conceptual approach is applied to understand legal theories and concepts, such as due process of law and exclusionary rules, in the context of criminal law. In addition, a case approach is used to analyze related jurisprudence, both domestically and internationally, including the case of Mapp v. Ohio which became the foundation of the fruit of the poisonous tree doctrine. This approach is also strengthened by a comparative approach, which aims to compare the regulation and implementation of exclusionary rules in other countries, such as the United States, the Netherlands, and Germany, in order to find a model that suits the needs of the Indonesian legal system.

The types of legal materials used in this research are divided into three main categories (Benuf & Azhar, 2020, p. 23). First, primary legal materials include legislation and jurisprudence as authoritative sources of law, as explained by Peter Mahmud. These sources include KUHAP, Law No. 48/2009, Law No. 39/1999, and other relevant regulations. Second, secondary legal materials consisting of literature, including books, journal articles, theses, and dissertations that discuss the topic of criminal procedure law, human rights, and exclusionary rules. Supporting data from the internet is also used to complete this study. Third, tertiary legal materials used as additional references, such as legal dictionaries, the Big Indonesian Dictionary (KBBI), and Black's Law Dictionary, to provide definitions and strengthen legal arguments.

By using this method, this research is expected to identify gaps in Indonesia's legal arrangements related to exclusionary rules, as well as provide applicable recommendations to strengthen the protection of human rights in the criminal justice process.

3. Result and Discussion

3.1. Analysis of the application of exclusionary rules of evidence in the Indonesian legal system

The principle of exclusionary rules of evidence aims to prohibit the use of evidence obtained illegally in the criminal justice process. (Fadhli, 2024, p. 85). This principle has its roots in the protection of human rights, ensuring that the legal process runs in accordance with the principles of due process of law and substantive justice. In the context of the Indonesian legal system, this principle has not been explicitly regulated in the Criminal Procedure Code (KUHAP), although its urgency is increasingly felt to close legal loopholes that allow illegal evidence to be used in court.

KUHAP, as the main legal framework in Indonesian criminal procedure, only regulates the types of valid evidence in Article 184, such as witness testimony, expert testimony, letters, instructions, and testimony of the defendant. However, this regulation does not explain in detail the process of obtaining evidence and does not provide strict limits on the use of evidence obtained through unlawful means, such as torture, threats, or intimidation. This lack of regulation opens up opportunities for abuse of authority by law enforcement officials, which in turn can undermine the principles of justice and harm the rights of suspects.

In practice, illegally obtained evidence is often used in Indonesian courts. This is contrary to internationally recognized principles, such as those applied in civil and common law countries, where illegal evidence is generally excluded from trials to preserve the integrity of the judicial process. For example, cases of torture of suspects to extract confessions are often not accompanied by strict sanctions against officers who violate the law. As a result, evidence resulting from such acts continues to be used as the basis for court decisions. (Prasetyo & Herawati, 2022, p. 408)..

Although Indonesia has ratified the Convention Against Torture (CAT) through Law Number 5 Year 1998, the application of the principles of protection against torture has not been fully integrated into the national legal system. (Ardya, 2023, p. 11). One significant gap is the absence of a clear mechanism to evaluate the validity of evidence in relation to the way it was obtained. This is in contrast to countries such as the Netherlands, which explicitly regulates the exclusionary rules principle in the Wetboek van Strafvordering (WvSv), where judges have the authority to reject evidence that has been unlawfully obtained (Ramadhina et al., 2015). (Ramadhina et al., 2022, p. 841).

To address this issue, the application of exclusionary rules in Indonesia could be an important solution to ensure that only legally obtained evidence can be used in the judicial process. This principle could also encourage law enforcement officials to better respect the rights of suspects during the investigation process. In addition, the integration of this principle into KUHAP could provide a clearer legal framework for judges in evaluating the validity of evidence. Thus, the application of the exclusionary rules principle will not only strengthen the protection of human rights, but also improve the integrity and public confidence in the Indonesian criminal justice system.

1. Regulation of Exclusionary Rules in Indonesia: The principle of exclusionary rules of evidence is a doctrine that aims to prohibit the use of unlawfully obtained evidence in the judicial process. This doctrine has developed in various international legal systems, such as the United States and European countries, as part of the protection of human rights and the application of the principle of due process of law. In Indonesia, although this principle has not been explicitly regulated in the criminal procedure law, the urgency of its application is increasingly felt to close the legal loopholes that allow the use of illegal evidence in the court process. (Djiwandono et al., 2024, p. 12068). Indonesian legal regulation, as stipulated in the Criminal Procedure Code (KUHAP), has not provided a clear definition of the validity of evidence in the context of how it was obtained. As a result, evidence obtained through torture, intimidation, or other unlawful acts still has the potential to be used in court. This condition not only violates the principle of justice, but also harms parties facing legal proceedings, especially suspects who are vulnerable to human rights violations. In that context, this analysis aims to review the deficiencies in the Indonesian legal system regarding the regulation of evidence, as well as provide recommendations to strengthen the application of the exclusionary rules principle. Using statutory, conceptual, case law and comparative approaches, this analysis seeks to illustrate how this principle can be integrated into the Indonesian legal system.

The integration of the exclusionary rules principle will not only improve the integrity of the Indonesian criminal justice system, but also provide stronger protection of individual rights in the legal process, in accordance with the values contained in national law and international instruments that Indonesia has ratified. (Rai & Salsabila, 2020, p. 5).

The Criminal Procedure Code (KUHAP) is the main guideline in the implementation of the criminal justice process in Indonesia. However, KUHAP does not explicitly regulate illegally obtained evidence, including statements given by suspects under duress, torture, or other unlawful acts. Article 184 of KUHAP only mentions the types of valid evidence, namely witness testimony, expert testimony, letters, instructions, and testimony of the defendant. (Fahlevy, 2022). However, a more detailed explanation of how such evidence should be obtained, including limitations on the validity of collection procedures, is not explicitly spelled out in this article or elsewhere in KUHAP.

This lack of regulation regarding evidence obtained illegally opens up opportunities for abuse of authority by law enforcement officials. In some cases, evidence obtained through unauthorized methods, such as torture of suspects or intimidation of witnesses,

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could be a solution to close this legal gap, while strengthening the protection of the rights of suspects in the criminal justice process.

Law Number 7 of 2020 provides more specific arrangements regarding the validity of evidence used in the Constitutional Court (MK) trial by emphasizing that evidence must be obtained legally and in accordance with legal provisions. (Republic of Indonesia, 2020). This provision aims to maintain the integrity of the judicial process and ensure justice for all parties involved. Article 36 emphasizes that the evidence used must be legally accountable for its acquisition. If evidence is obtained through unlawful means, it cannot be considered valid and cannot be used in the trial process. In addition, Article 36 also gives the Constitutional Court the authority to determine whether or not the evidence presented in the trial is valid. This provision provides clearer direction on the need to uphold standards of validity of evidence in the judicial process. The regulation not only highlights the importance of the substantial validity of evidence, but also emphasizes that the means of obtaining evidence must comply with the principles of due process of law and uphold human rights. This is relevant given the various reports of abuse of authority by law enforcement officials in obtaining evidence, such as torture of suspects or manipulation of electronic data. (Zubairy, 2021, p. 275). This provision in the Constitutional Court Law reflects the early adoption of the exclusionary rules principle in the Indonesian legal system, although its scope is still limited to trials at the Constitutional Court. This provision shows a progressive step in overcoming the legal vacuum regarding illegally obtained evidence. However, the implementation of this provision only applies within the scope of the Constitutional Court and has not yet penetrated into the realm of criminal justice in general. This poses a serious challenge, especially in criminal cases, where evidence obtained in violation of the law is often still used in trials in general courts.

The existence of Article 36 in the Constitutional Court Law could set an important precedent for wider application throughout the Indonesian judicial system. By extending the scope of this rule to the general courts, the Indonesian legal system can better protect the rights of individuals while ensuring that legal proceedings are conducted in accordance with the principles of legality and substantive justice. This move is also in line with efforts to improve the integrity of the justice system through strengthening evidence evaluation mechanisms at all levels of court.

The Draft Law on Criminal Procedure, which was submitted by the government on March 6, 2013, pays greater attention to the regulation of valid evidence. In Article 175 paragraph (2), it is emphasized that valid evidence must be obtained unlawfully. (Situmorang, 2018, p. 433).. The types of evidence regulated include evidence, letters, electronic evidence, expert testimony, witness testimony, defendant's testimony, and judge's observation. (Adhirajasa & Diningrat, 2024, p. 44).. Although this provision is more complete than the KUHAP, the limitations on unlawful acts in the process of obtaining evidence still need to be formulated more clearly. Without such limitations, the risk of abuse of authority by law enforcement officials remains high, thus threatening the protection of human rights in the criminal justice system.

3.2. Analysis of problems that prejudice the rights of suspects due to the unregulated exclusionary rules

The process of examining suspects in the investigation stage has an important role in determining the continuation of a criminal case. The rights of the suspect during the examination process have been guaranteed by the Criminal Procedure Code (KUHAP). Article 52 of KUHAP states that in the process of investigation and trial, the suspect or defendant has the right to provide information freely to the investigator or judge. In addition, Article 66 of KUHAP emphasizes that the suspect or defendant is not burdened with the obligation of proof. These two provisions emphasize that the suspect cannot be forced to give a confession or prove his guilt. This means that investigators do not have the authority to carry out coercive actions in order to obtain information or confessions from suspects.

However, in practice, this provision is often violated. One of the important components in the investigation stage is the Berita Acara Pemeriksaan (BAP), as stipulated in Article 117 paragraph (2) of KUHAP. This article states that the suspect's statement must be given freely and in accordance with the reality he/she experienced, and the investigator is obliged to record the statement accurately and without manipulation. However, irregularities often occur in its implementation. Law enforcement officials, especially the police, often use pressure, violence, or threats to force suspects to confess or hand over evidence. This is done to speed up the investigation process and complete the case file so that it can be immediately submitted to the prosecutor's office. In fact, the BAP is an important document that is the basis for making an indictment by the prosecutor and a reference for judges in deciding cases. Therefore, if the BAP is obtained through unlawful means, the validity of the indictment and court decision can be questioned.

In this case, M. Yahya Harahap, in his book Discussion of Problems and Application of KUHAP Investigation and Prosecution, explains that BAP obtained through violence, pressure, threats, or extortion is an invalid document. The invalidity of this BAP will have an impact on the subsequent legal process, so that it can interfere with substantive justice in handling criminal cases.(Harahap, 2009, p. 137).

In addition, Indonesia has actually ratified the Optional Protocol to the Convention Against Torture (OPCAT) through Law Number 5 of 1998 on the Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). This convention obliges states to prevent torture and inhumane treatment of anyone, including suspects. However, despite this ratification, the practice of torture by police officers during questioning continues. This violence is often aimed at unlawfully obtaining evidence or confessions, to the detriment of the suspect's rights that should be protected by law.

The absence of exclusionary rules in the Indonesian legal system is one of the main causes of this problem. Without an explicit regulation, evidence obtained through unlawful acts can still be used in court. This not only harms the suspect, but also undermines the principles of due process of law and substantive justice that should be the cornerstone of the criminal justice system.

3.3. Legal comparison of exclusionary rules of evidence between the Netherlands and Indonesia

The regulation of exclusionary rules of evidence in the Netherlands and Indonesia has some similarities and differences that reflect the characteristics of each legal system. The following are the main points of comparison:

First, both the Netherlands and Indonesia follow an inquisitorial criminal justice system, which is non-adversarial. In this system, the judge has an active role in examining the facts presented during the trial, analyzing the relevance of the applicable laws, and providing a verdict based on an objective assessment of all the evidence presented. This characteristic places the judge as the main controller of the trial process, in contrast to the adversarial system which bases proof on the competition between the litigating parties.

Secondly, there are significant differences in the stages of the investigation and the documentation of the process. In the Netherlands, under the inquisitorial system, prosecutors are required to carefully document each stage of the investigation. This document serves as an official record containing details of the investigation process, including the reasons and methods used during the investigation. The file has a dual function: it serves as a supporting document for the prosecutor in formulating charges and as a map of the investigation for interested judicial officials. As such, transparency and accountability at every stage of the investigation is a key focus.

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On the other hand, Indonesia has different arrangements in the investigation stage and coordination between the public prosecutor and the investigator. Under Article 92 of the Regulation of the Attorney General of the Republic of Indonesia PER-036/1/JA/09/2011, public prosecutors are appointed to monitor the progress of a case through coordination with investigators. The role of the prosecutor in this context includes the preparation of a case matrix, expressing a legal opinion on the completeness of the case file, and drafting an indictment plan. In practice, the prosecutor will only forward a case to trial if the case file has been declared complete (P-21). Unlike the Netherlands, the primary responsibility for documenting the investigation process in Indonesia lies with the investigator, not the prosecutor.

From this comparison, it can be seen that the Netherlands pays greater attention to the documentation of the investigation process as an integral part of its inquisitorial system. In contrast, Indonesia places more emphasis on coordination between prosecutors and investigators to ensure the completeness of the file before the case is submitted to the court. (Republik Indonesia, 2011). These differences reflect the distinctive legal approaches in balancing the principles of fairness with the efficiency of the judicial process in each country.

According to Romli, the criminal justice system in the Netherlands is based on the constitution which stipulates that general criminal law, military criminal law, the administration of justice, and the judicial system must be subject to statutory provisions. One of the main characteristics of the Dutch legal system is the application of the principle of legality, which is a fundamental principle in the European Civil Law legal tradition. The Netherlands also uses an inquisitorial justice system, where the criminal justice process is seen as a mechanism that must be conducted legitimately to achieve rational and impartial truth and justice.

In the Dutch legal system, law is seen as a rational instrument based on scientific methods to find the truth and realize justice. Thus, law is considered a science because it is based on rational decisions that use logic and balanced analysis to produce justice. Therefore, the entire judicial process, from investigation to prosecution, must follow predetermined legal rules.

As a consequence of the inquisitorial system, the public prosecutor has a central and dominant role in every stage of the criminal justice process in the Netherlands. (Zunaidi & Najih, 2020, p. 12).. The public prosecutor is not only in charge of giving orders to the police regarding investigative steps, but also has the authority to decide whether a case will be forwarded to court or terminated. In exercising its authority, the public prosecutor is based on the principle of expediency, which allows the prosecution of a case to be stopped if the criminal offense is considered minor or if continuing the legal process does not meet the public interest. In addition to the principle of expediency, the public prosecutor is also guided by the principle of opportuniteitsbeginsel, which gives the public prosecutor the freedom not to bring a case to court or to resolve it in another way at his or her discretion.

This discretion of the public prosecutor is regulated in both material criminal law (Wetboek van Strafrecht or Sr) and formal criminal law (Wetboek van Strafvordering or Sv). These provisions reflect the flexibility of the Dutch legal system in balancing the interests of substantive justice and the efficiency of the criminal justice system.

The Netherlands, as a country that adheres to the Civil Law legal system, has a major influence on the development of law in Indonesia. In the context of the application of the exclusionary rules principle, the Netherlands regulates the treatment of illegally obtained evidence through a special provision stipulated in Article 359a paragraph (1) letter b of the Wetboek van Strafvordering (WvSv), part of the Dutch criminal procedure law. (Ramadhina et al., 2022, p. 387).. Unlike the United States, which largely bases this principle on court precedent, the Netherlands regulates it in detail in law. Provisions related to the acquisition of evidence are also contained in the WvSv, which includes is still submitted to the court and even used as a basis for decision making. This practice contradicts the principle of due process of law, which demands that every step in the legal process is carried out in accordance with the applicable legal rules. This indecisiveness creates legal loopholes that can result in human rights violations, especially the right of suspects to be treated fairly and humanely.

In addition, KUHAP also does not provide an operational definition of the term «legal» in Article 184 paragraph (1). This lack of clarity has led to various interpretations among law enforcement officials and courts. For example, although Article 52 of KUHAP stipulates that suspects may not be coerced into giving testimony, there is no mechanism in KUHAP that regulates sanctions for officers who violate this provision. As a result, there are many cases where confessions obtained through physical or psychological pressure are still used in trials, even becoming the main evidence for sentencing.

Another weakness found in KUHAP is the absence of a clear mechanism to evaluate the validity of evidence during the trial process. Unlike legal systems in several other countries that apply the exclusionary rules principle, KUHAP does not have a regulation that explicitly prohibits the use of evidence obtained through illegal means. This is contrary to the principle of substantive justice, which demands that only legitimate and legally obtained evidence can be used to enforce the law.

This highlights the need for reforms in KUHAP to close these legal loopholes. For example, the draft law on criminal procedure (RUU HAP) proposed by the government in 2013 provides more detailed arrangements regarding the validity of evidence. The bill emphasizes that valid evidence must be obtained without violating the law. However, the implementation of this principle requires further elaboration, especially regarding the limits of actions that are considered unlawful in obtaining evidence. Clearer regulation of legally obtained evidence is essential to maintain the integrity of the criminal justice process. Without strict regulation, the risk of human rights violations, abuse of authority by officials, and court decisions that undermine justice will continue. Thus, the reform of KUHAP to incorporate the principle of exclusionary rules as part of the Indonesian criminal law system is an urgent step that cannot be delayed.

In contrast to the Criminal Procedure Code, Law No. 48/2009 on Judicial Power provides that the evidence used in the trial must meet the legal criteria. Article 6 paragraph (2) states that «no one shall be sentenced to punishment except on the basis of valid evidence according to law.» This provision is in line with the principle of due process of law, which emphasizes the importance of gathering evidence in accordance with legal procedures to ensure justice for the parties involved in the judicial process. This provision demonstrates an effort to ensure that criminal trials focus not only on the final outcome of the verdict, but also on the validity of the evidentiary process underlying the verdict. This principle reinforces that the evidence used must be generated through legal means and not violate the rights of the suspect, such as freedom from pressure or torture that often occurs during the investigation stage. However, this arrangement still has weaknesses because it does not explicitly explain the mechanism for evaluating the validity of evidence obtained through unlawful means. In practice, valid evidence is often only assessed by its type, not the way it was obtained. This can lead to legal loopholes, where evidence obtained in violation of human rights is still used in the trial process because there are no rules governing the testing mechanism. (Eddyono & Napitupulu, 2014, p. 87). In addition, Law No. 48/2009 does not give judges direct authority to reject evidence obtained illegally. Judges are only tasked with ensuring that evidence is in accordance with the law, but the interpretation of the validity of the acquisition process is not regulated in detail. This lacuna provides room for practices of abuse of authority by law enforcement officials, which is contrary to the principle of due process of law.

To address these weaknesses, more specific arrangements are needed to ensure that evidence used in court is not only valid in type, but also obtained through unlawful means. The adoption of the exclusionary rules principle in the Indonesian legal system several chapters such as Chapter IV on Information Gathering, Chapter V on Searches, Chapter VI on Recording of Conversations, Chapter VII on ITE-Based Investigations, and Chapter VIII on Data Requests.

Article 36e of the Wetboek van Strafrecht (WvS), which is the Dutch material criminal law, explains that evidence is considered illegal if law enforcement officers violate the provisions of the criminal procedure, act without a warrant, or ignore legal principles such as not using force and maintaining fairness in the process of collecting evidence. In addition, evidence obtained by violating investigative procedures is also considered invalid. However, the exclusionary rule in the Netherlands is not automatically applied to all illegal evidence. Judges have the discretion to determine the appropriate course of action based on the violations found. The choice of action includes (Borgers & Stevens, 2010, p. 46):

1) Giving the prosecutor the opportunity to correct administrative errors, as provided for in Article 199 WvSv.

2) Stating that there were irregularities in the collection of evidence but without serious consequences to the evidence, as provided for in Article 349 paragraph (1) WvSv.

3) Provides for a reduction of sentence to the accused if the offense is deemed serious but does not completely nullify the validity of the evidence. If there is a causal link between the offense and the evidence, the evidence may be excluded, as provided for in Article 349a paragraph (1) WvSv.

4) Dismiss the charges if the seriousness of the offense is deemed to threaten the principle of a fair trial, as set out in Article 359a (3) WvSv.

5) The application of this principle in the Netherlands is highly dependent on the judgment of the judge in charge. This shows that the exclusionary rules in the Netherlands are flexible and adapted to the context of each case. Judges have a central role in ensuring that evidence used in court meets standards of fairness, including protecting defendants from unlawful treatment during the legal process.

The principle of exclusionary rules in Dutch criminal procedure law aims to eliminate evidence obtained through violence or other unlawful methods. (Sriwidodo, 2020, p. 71). This principle also provides protection for the human rights of the accused by ensuring that the judicial process is fair and in accordance with the law. In addition, the application of this principle is a preventive measure to prevent the recurrence of unlawful practices by law enforcement officials. By granting discretion to judges, the Dutch judiciary avoids the role of legitimizing the practice of illegally obtaining evidence, thereby strengthening public confidence in the judicial system.

3.4. Implementation of the exclusionary rules of evidence principle in Indonesia

This could be an important step in strengthening the protection of human rights and improving the integrity of the criminal justice system. This principle aims to prohibit the use of evidence obtained unlawfully, including through torture, threats, intimidation or other unlawful acts. To adopt this principle, an implementation model that is tailored to the characteristics of the Indonesian legal system, which adheres to the civil law tradition with an inquisitorial approach, is required. (Baehaki, 2024, p. 5)..

1). Adjustments in the Legislative Framework

The first step in implementing this principle is to explicitly include exclusionary rules in the revised Criminal Procedure Code (KUHAP). This regulation can adopt the provisions as stipulated in the Wetboek van Strafvordering (WvSv) in the Netherlands, where evidence obtained illegally is excluded from the trial. (Agustini & Hadjar, 2024, p. 1316).. The revision of the KUHAP could include a provision stipulating that:

1) Evidence obtained unlawfully cannot be used in court.

2) Judges are authorized to assess the validity of evidence based on the process

of obtaining it.

3) The mechanism for evaluating the validity of evidence is accompanied by sanctions for officers who violate legal procedures.

2). Strengthening the Role of Judges in Assessing the Validity of Evidence

As part of the inquisitorial system, judges in Indonesia have the authority to examine and assess evidence presented at trial. In the new model, this role should be expanded by giving judges the authority to actively evaluate whether evidence was obtained through legal or unlawful means. This is in line with the concept of judicial control applied in other countries, such as the Netherlands, where judges act as the main watchdog in maintaining the fairness of the judicial process.

3). Establishment of Grievance and Oversight Mechanism

To ensure effective implementation of the exclusionary rules, a grievance mechanism is needed that allows suspects or legal counsel to report allegations of torture or other violations during the investigation process. This mechanism can involve independent institutions such as Komnas HAM or the Ombudsman to investigate alleged violations. In addition, internal supervision in the police and prosecutor's office needs to be strengthened to prevent unlawful practices.

4). Training and Education for Law Enforcement Officials

The application of the exclusionary rules principle must be supported by a strong understanding among law enforcement officials, including police, prosecutors, and judges. (Mertens & Wasserstrom, 1981, p. 365). Therefore, intensive training on the principles of due process of law, protection of human rights, and procedures for obtaining valid evidence is needed. This training not only improves the professionalism of law enforcement officers, but also prevents abuse of power.

5). Sanctions to Improve Accountability

As part of the new model, the application of this principle must be accompanied by strict sanctions against officials who are proven to have violated legal procedures in obtaining evidence. Such sanctions should not only be administrative but also criminal, so as to provide a deterrent effect and increase accountability in the law enforcement process.

5. Conclusions

Until now, Indonesia has no explicit regulation regarding the application of the Exclusionary Rules principle, which has an impact on the weak protection of the rights of suspects in the criminal justice process. Without a clear legal mechanism to exclude evidence obtained unlawfully, law enforcement officials can easily utilize a suspect's confession obtained through pressure or violation of the law as a basis for proof. This practice not only harms the suspect, but also undermines the principles of justice and damages the image of the judiciary. For this reason, concrete steps are needed by regulating the Exclusionary Rules principle in the KUHAP, taking inspiration from the provisions of Article 359a paragraph (1) letter b of the Wetboek van Strafvordering (WvSv) in the Netherlands which expressly excludes evidence obtained illegally. In addition to providing a clear legal basis, this regulation can reduce the number of human rights violations in the investigation process, prevent the practice of torture, and create a deterrent effect for law enforcement officials who violate the rules. Thus, the Indonesian legal system will be able to guarantee the protection of human rights, ensure a judicial process that is in accordance with the principle of due process of law, and increase public confidence in judicial institutions.

Recommendations for a New Model Implementing Exclusionary Rules of Evidence in Indonesia:

The application of exclusionary rules of evidence in Indonesia could be a strategic step to improve the criminal justice system, particularly in protecting human rights and enhancing substantive justice. This principle aims to prohibit the use of evidence obtained through unlawful means, such as torture, threats, or violations of investigative procedures. Although it has not been explicitly regulated in the Criminal Procedure Code (KUHAP), the application of this principle is very relevant to fill the legal gap that allows abuse of authority by law enforcement officials. (Lutfian, 2018, p. 89).

The model for applying the exclusionary rules principle must consider the characteristics of the Indonesian legal system which is based on civil law and uses an inquisitorial approach. Therefore, it is necessary to develop a comprehensive regulatory framework in KUHAP that includes mechanisms for assessing the validity of evidence by judges, sanctions for violations of the law by officials, and supervisory procedures to ensure compliance with the principle of due process of law. By adopting regulatory elements from countries such as the Netherlands, which has implemented this principle through the Wetboek van Strafvordering (WvSv), Indonesia can build a more fair, transparent and accountable legal system.

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