

The Urgency of Regulating Illegally Obtained Evidence (the Exclusionary Rule) in the Indonesian Criminal Justice System: A Perspective on Harmonizing the New Criminal Code and Criminal Procedure Code

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Abstract

Criminal law enforcement aims to achieve legal certainty, justice, and the protection of human rights through the criminal justice system. However, the practice of using illegally obtained evidence such as evidence secured through torture, intimidation, or procedural violations persists, even though the Criminal Procedure Code (KUHAP) mandates that evidence be obtained lawfully. This study aims to foster the transformation of Indonesia's criminal justice system into one that is modern, civilized, and dignified a system where the truth is sought not through illicit means, but through transparent and accountable processes. The study employs a normative juridical research method, analyzing the law as a system of norms. The findings lead to the following conclusions: (1) The regulation of "exclusionary rules" within Indonesia's criminal evidentiary system fails to provide legal certainty regarding illegally obtained evidence. Consequently, a revision of the KUHAP is required to explicitly regulate the application of exclusionary rules, thereby ensuring legal certainty, justice, and the protection of human rights. (2) The exclusionary rule principle aims to bar the use of illegally obtained evidence in order to protect human rights and guarantee a fair trial. Therefore, explicitly incorporating the exclusionary rule into the KUHAP is an urgent necessity to ensure legal certainty, justice, the integrity of law enforcement, and the protection of human rights.

Keywords

Criminal Justice System, Evidence, Exclusionary Rule, Regulation, Unlawful



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INTRODUCTION

Along with the times, the demand of the Indonesian people for the presence of a law that is firm, authoritative, and able to guarantee a sense of social justice is increasing. In this context, law enforcement is understood as a series of actions to implement the provisions of the law in such a way.

In his book *Law Enforcement: A Sociological Review*, Prof. Dr. Satjipto Rahardjo stated that law enforcement does not solely mean implementing rules normatively, but is a complex sociological process. He distinguishes the elements involved based on the degree of their involvement whether they are somewhat close or somewhat distant to the dynamics of law enforcement.

In criminal law, criminal law enforcement is an effort to translate and realize the wishes of criminal law into reality, that is, criminal law according to Van Hammel is the entire basis and rules adopted by the state in its obligation to enforce the law, namely by prohibiting what is contrary to the law (*Onrecht*) and imposing *nestapa* (suffering) on those who violate the prohibition.

The criminal justice system involves various institutions such as the police, prosecutor's office, courts, and correctional institutions. These institutions are subsystems that work in an integrated manner to achieve crime control goals. According to Mardjono Reksodiputro, the criminal justice system is a formal process in society that is designed to overcome crime problems. This system aims to create justice through efficient and effective law enforcement mechanisms.

Juridically and factually, in criminal law enforcement, there is a sub-system of the Criminal Justice System (SPP) as the bearer of law enforcement power, not under one roof of judicial power. The Police and the Prosecutor's Office are two pillars of law enforcement in the investigation and prosecution function in addition to Correctional Institutions as criminal implementers under the control of government power. The criminal justice system involves various institutions such as the police, prosecutor's office, courts, and correctional institutions. These institutions are subsystems that work in an integrated manner to achieve the goal of crime control.

The reality of criminal law enforcement in Indonesia is currently facing a fundamental paradox that threatens the integrity of the justice system itself. The phenomenon that is the main anxiety and the starting point of this study is the persistent practice of using illegally obtained evidence in the criminal trial process. In courtrooms, it is often found that trial facts are found where judges receive evidence — both in the form of confiscated goods, documents, or defendants' confessions obtained by investigators through methods that violate procedures, such as searches without permission, intimidation, and torture.

The urgency to examine this issue in depth is based on a shift in global and national legal paradigms that demand a balance between the effectiveness of law enforcement and the protection of human rights. The essence of modern criminal procedure law is no longer just asking "is the evidence true?), but also demanding an

answer to the question of "is the evidence legally obtained". This research strengthens the argument that *Due Process of Law* is not an obstacle to law enforcement, but an absolute prerequisite for justice. In practical terms, the results of this study are designed to have a real impact on policymakers. The resulting recommendations will be valuable input for the House of Representatives (DPR) and the Government in the ongoing process of discussing the Revised Criminal Code, as well as for the Supreme Court in drafting the Supreme Court Regulation (PERMA) as an interim guideline for judges. By applying the right *Exclusionary Rule* model, it is hoped that a disciplinary effect will be created for investigators to work more professionally, scientifically, and respect human rights.

Ultimately, this research aims to encourage the transformation of Indonesia's criminal justice system to be more modern, civilized, and dignified, where the truth is no longer sought through the path of darkness, but through a bright and accountable process. The results of this research are expected to provide benefits/benefits for parties, both theoretically, practically and for other general public.

METHODS

This research method is classified as normative juridical research, which is legal research that conducts law as a system of norms. The norm system in question is about the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). The approach used in this research is the statute approach, this approach is carried out by examining all laws and regulations related to the legal issues being discussed (researched). This research is normative research and also this research is descriptive-comparative. Descriptive-comparative means research that provides an overview of criminal responsibility for corruption crimes. By using the object of research in the form of existing libraries, relevant books, legislation, Islamic law rules, journals and regulations that have a correlation to the discussion of the problem.

This research uses normative research techniques. Therefore, the research techniques used in collecting data through this method require the active role of the researcher to read literature that has a correlation with the problem being researched. In the literature study that the researcher conducts, this is by using library research, which is research that is carried out by reading, citing, studying laws and regulations, documents and other information. Data processing and analysis is a process where after obtaining data, it is determined what materials are needed as part of writing. After the data obtained is processed, the data is analyzed. The data is analyzed by

qualitative analysis method, namely data analysis by analyzing, drawing conclusions and pouring it in the form of sentences.

FINDINGS AND DISCUSSION

Conceptually, the exclusionary rule developed in the Anglo Saxon legal system, particularly in the judicial practice of the United States, as a mechanism to control the actions of law enforcement officials so as not to violate the constitutional rights of citizens. This doctrine functions as a preventive and repressive instrument at the same time: preventive because it encourages the authorities to act in accordance with the law, and repressive because it provides sanctions in the form of non-use of illegally obtained evidence. In the Indonesian context, a similar principle has not been explicitly formulated in the Criminal Code, raising questions about the juridical consequences for the practice of receiving evidence in court.

Article 235 of the Criminal Procedure Code states that a judge may not impose a criminal sentence on a person unless with at least two valid evidences he obtains the conviction that a criminal act really occurred and that it is the defendant who is guilty of committing it. Furthermore, Article 235 paragraph (1) of the Criminal Procedure Code determines that valid evidence is witness testimony, expert testimony, letters, instructions, and testimony of the defendant. This provision shows that the Criminal Procedure Code adheres to a negative system of proof according to the law (*negatief wettelijk bewijstheorie*), which is a combination of evidence that is valid according to the law and the conviction of the judge.

However, the Criminal Code does not expressly stipulate that evidence obtained through torture, searches without a valid permit, illegal wiretapping, or other procedural violations must be set aside. Indeed, there are provisions that regulate the procedures for searches and seizures in Articles 32 to 46 of the Criminal Code, as well as provisions on arrest and detention in Articles 16 to 31 of the Criminal Code. However, sanctions for violations of these procedures are not explicitly in the form of cancellation or exclusion of evidence from the evidentiary process.

The development of the new Criminal Procedure Code shows a tendency to accommodate the principle of restricting the use of evidence obtained illegally. In several discussions of the new Criminal Procedure Code, provisions have been formulated stating that evidence obtained illegally has no evidentiary value. Although this formulation is not completely identical to the doctrine of exclusionary rule in the Anglo-Saxon system, there is at least a normative effort to provide stricter limits on the use of illegal evidence.

A comparison between the old Criminal Code and the new Criminal Procedure Code shows a paradigm shift from the dominant orientation of material truth to a balance between material truth and the protection of human rights. In the old Criminal Procedure Code, the main emphasis lies on the fulfillment of valid evidence according to Article 184 and the conviction of judges according to Article 183, without detailing the legal consequences of procedural violations in the acquisition of evidence. Meanwhile, in the new Criminal Procedure Code, there is a tendency to affirm that the validity of evidence is not only determined by its type, but also by the way it is obtained.

Theoretically, the absence of an explicit regulation on exclusionary rules in the old Criminal Procedure Code creates tension between the principles of legality, the principle of legal certainty, and the principle of human rights protection. On the one hand, the negative proof system according to the law provides discretion to judges to assess each piece of evidence freely and responsibly. On the other hand, without strict normative guidelines, such discretion has the potential to result in different verdicts on similar cases.

From the perspective of the principle of due process of law, every action of law enforcement officials that violates procedures should have a direct impact on the validity of the results of the action. If there is no sanction in the form of exclusion of evidence, then violation of procedures risks not having significant consequences. This can create a negative incentive for officials to ignore procedures in order to obtain recognition or evidence in a quick way.

Thus, it can be concluded that the absence of an explicit regulation regarding the exclusionary rule in the new Criminal Procedure Code has implications for, namely:

1. Wide interpretation space for judges to accept or reject evidence;
2. Potential weak protection of the human rights of suspects or defendants;
3. Inconsistencies in judicial practices;
4. Legal uncertainty in the application of evidentiary standards.

Normatively, the explicit regulation of the exclusionary rule in Indonesia's criminal procedure law is an urgent need to strengthen the principle of the rule of law, ensure legal certainty, and ensure that the law enforcement process runs in accordance with the principles of justice and the protection of human rights. Without such arrangements, the criminal justice system has the potential to remain in a tension between the effectiveness of law enforcement and the protection of citizens' constitutional rights.

The urgency of reforming the exclusionary rule in the Indonesian criminal procedure law system must be placed within the broad framework of national law reform after the enactment of Law Number 1 of 2023 concerning the Criminal Code as a new codification of material criminal law. The reform of the Criminal Code through Law Number 1 of 2023 not only replaces the colonial legacy of *Wetboek van Strafrecht*, but also reforms the national criminal paradigm by affirming the principles of legality, protection of human rights, proportionality, and a more humanistic and retroactive orientation of justice. These fundamental changes in the material criminal law systematically demand formal adjustments to the criminal law in order to create harmonization between the norms that govern acts and the norms that govern the way they are enforced.

The 2023 Criminal Code in Article 1 paragraph (1) emphasizes that no one can be convicted or subjected to action, unless the act committed has been determined as a criminal act in the applicable laws and regulations at the time the act was committed. This formulation is an affirmation of the principle of legality that places the law as the sole basis for criminal legitimacy. The principle of legality not only requires certainty regarding prohibited acts and their criminal threats, but also contains the implication that the entire law enforcement process must run in accordance with the law. The 2023 Criminal Code also emphasizes the purpose of punishment which is not solely oriented towards retribution, but includes prevention, rehabilitation, balance restore, and community protection. This orientation shows a paradigm shift from a repressive approach to a more just and humane approach.

Indeed, the Criminal Procedure Code regulates the procedures for arrest, detention, search, and confiscation in detail. However, the Criminal Procedure Code does not explicitly state that violations of these provisions result in the evidence obtained being null and void. The absence of this strict norm leads to the absence of procedural sanctions that are directly related to the validity of evidence. As a result, judicial practice often places procedural violations as administrative or ethical issues, not as issues that determine the validity of evidence.

From the perspective of legal harmonization, this condition creates a disharmony between progressive substantive criminal law and criminal procedural law that has not fully adopted the principle of comprehensive protection of rights. The 2023 Criminal Code requires that punishment be carried out in a fair, proportionate manner, and respect human dignity. However, if the evidentiary process still allows the use of evidence obtained illegally, then this goal becomes paradoxical. Humanist

material law will lose its effectiveness if it is not supported by procedures that ensure the integrity of the judicial process.

The urgency of reforming the exclusionary rule is also closely related to the principle of the rule of law. In the rule of law, state power is limited by law, and every action of law enforcement officials must be subject to predetermined procedures. If the violation of procedures does not imply that the results of the violation are overruled, then the limitation of power becomes pseudo. In this framework, the exclusionary rule serves as an effective control mechanism against potential abuse of authority by law enforcement officials. This principle emphasizes that the goal of law enforcement cannot be achieved through unlawful means.

Post-Criminal Code Harmonization 2023 requires vertical and horizontal synchronization in the criminal law system. Vertical synchronization means the conformity between laws and regulations with constitutional norms and human rights principles. Horizontal synchronization means harmony between material criminal law and criminal procedural law. Without explicit arrangements regarding exclusionary rules, synchronization will not be achieved optimally. Criminal procedural law will remain oriented towards the search for material truth alone, without providing guarantees that the truth is obtained through legitimate procedures.

From the perspective of legal certainty, an explicit regulation of the exclusionary rule will provide clear guidelines for judges in assessing the validity of evidence. So far, the absence of strict norms has led to inconsistencies in decisions. In some cases, judges dare to exclude evidence obtained through violation of rights, while in other cases similar evidence is still accepted. This inconsistency creates legal uncertainty and has the potential to reduce public trust in the judicial system.

Furthermore, this reform is also important in the context of the accountability of law enforcement officials. Without the consequences of excluding evidence, procedural violations do not have a significant impact on the success of prosecutions. This can create a negative incentive for unprofessional investigative practices. With the exclusionary rule, law enforcement officials will be encouraged to strictly adhere to procedures because any violation has the potential to abort the evidence obtained.

Thus, the reform of the exclusionary rule regulation is a necessity in the context of legal harmonization after the ratification of the 2023 Criminal Code. This reform is not just an addition of technical norms to the criminal procedure law, but part of an effort to build a criminal justice system that has integrity, justice, and respect for human rights. Without these regulations, the reform of the national criminal law will experience an imbalance between substance and procedure, so that the great goal of

legal reform to realize substantive justice and legal certainty will not be optimally achieved.

CONCLUSION

Based on the analysis of the discussion, it can be concluded that 1) the urgency of the absence of explicit regulations regarding the exclusionary rule on the practice of receiving evidence in court is how the application of the principle of Exclusionary Rules in the criminal evidentiary system in Indonesia is basically in line with the goal of protecting human rights and realizing a fair trial. However, the regulation in the criminal procedure law is still not comprehensive so that it is not able to provide legal certainty regarding the legal consequences of evidence obtained illegally. Indonesia's criminal evidentiary system adheres to the theory of proof according to the law in a negative manner (*negatief wettelijk bewijs theorie*) as reflected in Article 183 of the Criminal Code, which stipulates that a judge may not impose a criminal sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act actually occurred and the defendant is guilty of committing it. 2) Reform of the exclusionary rule regulation is urgent when viewed from the perspective of legal harmonization after the ratification of the new Criminal Procedure Code, with the non-optimal application of the Exclusionary Rules has implications for legal uncertainty, weak protection of the rights of suspects and defendants, and has the potential to encourage the practice of abuse of authority in the investigation process. The absence of a clear mechanism to declare evidence invalid results in evidence obtained illegally being still possible to be used in trial, thereby reducing the integrity of the criminal justice system.

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