

PERLINDUNGAN HAK TERSANGKA MELALUI PENERAPAN “EXCLUSIONARY RULES OF EVIDENCE” DALAM SISTEM PERADILAN PIDANA INDONESIA

INTISARI

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Exclusionary rules of evidence merupakan pengaturan atau doktrin yang mewajibkan hakim untuk mengesampingkan alat bukti yang diperoleh secara melawan hukum (alat bukti menjadi tidak sah) dalam persidangan. Secara historis, *exclusionary rules* dianggap berakar pada sistem *jury* pada sistem hukum *common law*. Bila dihubungkan dengan dua model peradilan pidana Packer, *exclusionary rules* hanya dikenal dalam model *due process* yang mengutamakan perlindungan HAM di atas efisiensi penegakan hukum.

Di Indonesia (termasuk sistem *civil law* dan model peradilan pidananya cenderung *crime control*) secara normatif *exclusionary rules* tidak dikenal. Padahal selama ini, sistem peradilan pidana Indonesia belum mencerminkan standar tertinggi peradilan yang adil. Hak-hak tersangka kerap kali dilanggar melalui penyiksaan dan intimidasi serta penggeledahan dan penyitaan tidak sah. Namun, secara praktis terdapat beberapa putusan hakim yang menerapkan *exclusionary rule*.

Penelitian ini bertujuan untuk menjelaskan bagaimana penentuan sahnyanya alat bukti di Indonesia dan bagaimana penerapan *exclusionary rules of evidence* berdasarkan praktek peradilan pidana Indonesia.

Penelitian ini merupakan penelitian yuridis normatif yang ditunjang dengan data wawancara dengan praktisi hukum. Hasil penelitian menunjukkan: *Pertama*, dalam KUHAP dan undang-undang pidana khusus tidak mengenal batasan-batasan bagi hakim untuk menentukan sahnyanya suatu alat bukti. Semua alat bukti yang diajukan ke persidangan akan diakui sebagai alat bukti yang sah sepanjang telah diatur dalam undang-undang. Tidak dikenalnya batasan-batasan untuk menentukan sahnyanya alat bukti secara historis berkaitan dengan prinsip “*freedom of proof*” dalam hukum pembuktian eropa kontinental yang menekankan pada kebebasan dan diskresi hakim. *Kedua*, meskipun sahnyanya alat bukti tidak mencakup keabsahan perolehannya, dalam praktiknya pengujian keabsahan perolehan alat bukti dalam tahap adjudikasi terjadi. Namun, praktik pengujian sangat bergantung pada diskresi hakim akibat tidak dikenalnya *exclusionary rule* dalam KUHAP. Putusan MA No. 45 PK/Pid.sus/2009 dan Putusan Pengadilan Negeri Blambangan Umpu No. 105/Pid.B/2013/PN.BU menjadi contoh penerapan *exclusionary rule* dalam sistem peradilan pidana Indonesia.

Kata Kunci: *Exclusionary rule of evidence*, sistem peradilan pidana, hak tersangka

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PROTECTION OF THE RIGHTS OF THE SUSPECT BY IMPLEMENTING EXCLUSIONARY RULES OF EVIDENCE IN INDONESIA'S CRIMINAL JUSTICE SYSTEM

ABSTRACT

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Exclusionary rules of evidence are rules or judicial doctrine mandating the court to exclude unlawfully obtained evidence (evidence considered inadmissible) in criminal trial. Historically, exclusionary rules has long been viewed as a product of jury in the common law system. In relation to Packer's two dichotomized criminal justice models, exclusionary rules only recognized by the due process model, which emphasize protection of human rights over efficiency.

Indonesia (which belong to the civil law system and tends to comply with the characteristics of the crime control model) has no exclusionary rules. When Indonesia's criminal justice system has not comply fair trial principle. Suspects' rights are frequently violated during investigation processes through torture and intimidation or illegal search and seizure. However in practice, some verdicts implemented exclusionary rule.

This research explained how Indonesian laws regulate the admissibility of evidence in criminal trial and how the implementation of exclusionary principle in indonesia's criminal justice system.

This research used normative method, supported by interview data. This research resulted in two conclusion: *First*, the Indonesian criminal procedure code (KUHAP) and special criminal laws do not bound the judge with strict rules to determine the admissibility of evidence. All evidence brought by the prosecutor should be admissible as long as the evidence has been regulated in the criminal procedure code and special criminal laws. The absence of rules determining admissibility of evidence are historically linked to continental law of evidence's principle which also known as 'freedom of proof'. *Second*, although the provision on admissible evidence do not contain any rules on how it is gathered, court practices recognized the opportunity for the defendants to challenged the admissibility of illegally obtained evidence. However, it relies heavily on the judges' discretion because exclusionary rule has not been regulated in the criminal procedure code. High Court verdict No. 45 PK/Pid.sus/2009 and Blambangan Umpu District Court verdict No. 105/Pid.B/2013/PN.BU are examples of the implementation of exclusionary rule in Indonesia's criminal justice system.

Key Words: Exclusionary rule of evidence, criminal justice system, rights of the suspect

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