



Construction of Commissioner Judges in the Renewal of Justice Procedure Law Based on Pancasila

Dwi Nurahman; Maroni Maroni; Ahmad Irzal Fardiansyah

Doctoral Program of Law, Lampung University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v11i3.5629>

Abstract

The development of national criminal procedural law is based on the philosophy/view of life of the nation and the foundations of the state (Pancasila) which animates every article or paragraph and reflects the protection of human rights and the obligations of citizens. The rationale for amending Law Number 8 of 1981 concerning Criminal Procedure Law is to add the presence of a Judge Commissioner as an effort to protect the human rights of defendants, both in the investigation and prosecution process. Protection of human rights for suspects/defendants is an obligation that must be given to them by the state from all forms of oppression. This article raises the issue of what drives the construction of judge commissioners in the reform of just procedural law in Indonesia. So far, procedural law has raised many doubts about its ability to protect the rights of suspects. The Construction Judge Commissioner has the authority at the preliminary examination stage to supervise the implementation of coercive measures (*dwang middelen*), act executively to participate in leading the implementation of coercive measures, determine which investigator will carry out the investigation if a dispute occurs between the police and the prosecutor, and make decisions on objections - objections submitted by parties subject to action based on Pancasila law.

Keywords: *Construction; Judge Commissioner; Reform; Procedural Law; Justice; Pancasila*

Introduction

Law Number 8 of 1981 concerning the Criminal Procedure Code, which is more than a quarter of a century old, is often referred to as the "great" work of the Indonesian nation, a law made by Indonesian criminal procedural law experts accompanied by integrity and enthusiasm to realize government administration that protects the interests of citizens in accordance with the Preamble to the 1945 Constitution.

In the substance of the current Criminal Procedure Code, there are several shortcomings, such as in the field of science and technology, which must be immediately anticipated by the Indonesian government so that criminal procedural law is not left behind by developments in the era of globalization, especially regarding various forms of crime, considering that in In the current era of globalization, crime

is also experiencing developments in line with the development of economic globalization, as well as advances in science and technology.

Community relations in the international world are also very fast, marked by the existence of various international conventions related to areas of life that need to be followed by Indonesia as part of the international community. Many international conventions have been ratified and adapted by Indonesia, such as the International Convention on the International Criminal Court, the United Nations Convention Against Corruption, the International Convention Against Torture and the International Covenant on Civil and Political Rights (ICCPR), ratification of related conventions with criminal procedural law was implemented after 1981. Even though several of these international provisions have been ratified, in their implementation there is still violence committed by investigators (Police) in examining and making reports of Investigation Minutes.

The presence of a pre-trial institution is not in accordance with the initial idea of the intention of this institution as protection against deviations from coercive efforts in the broadest sense (*dwang middelen*) from law enforcement officials and is also inconsistent with the intention of protecting the Criminal Procedure Code for parties who involved in an update to Law Number 8 of 1981 so that it appears that there is no integrated criminal justice system.

To be able to anticipate this, the main thing is to revise the Criminal Procedure Code by bringing in Commissioner Judges whose role is to replace pre-trial institutions. The authority of pre-trial institutions is not as effective as expected by justice seekers.

Protection of human rights for suspects/defendants is an obligation that must be given to them by the state from all forms of oppression. Humans were created with the same dignity and position, since birth, God's most perfect creatures have been awarded a set of basic rights in life that are fundamental to them regardless of differences in race, nationality, age or gender.

The current condition of pre-trial supervision is that it is more repressive and not preventive. In pre-trial someone can sue the investigator (Police) or public prosecutor (*Jaksa*), but in reality the pre-trial always fails, because the case is submitted to court, so the pre-trial lawsuit is declared a failure. This is different from the preliminary hearing process used by Common Law countries and the United States, which is carried out before the main examination of the case but on a different basis.

In response to the legal issues that have arisen, the government together with the People's Representative Council (DPR).

People's Representative Council have created a Draft Law on the Revision of the Criminal Procedure Code, one of the contents of which is to replace the Pretrial Institution with a Judge Commissioner. The background underlying the emergence of Commissioner Judges is to better protect human rights guarantees in the criminal justice process and avoid traffic jams due to differences between investigating officers from different agencies. Incidents of unlawful arrest and detention are serious violations of people's basic rights to liberty and freedom. Unauthorized confiscation is a serious violation of someone's property rights, and an unauthorized search is a violation of the peace of the house where someone lives.

Research Methodology

This scientific writing uses the method of Sociological Legal Research. Sociological Legal Research is a study that focuses on the law as a norm, thus constituting positive legal research. This study aims to describe the reality in accordance with the phenomenon in detail and thoroughly, as well as collecting data from a natural setting by utilizing the researcher as a key instrument as a pioneer of the

problems to be studied. Scientific writing uses a qualitative approach as a research process that instruments descriptive data in a form of oral data observed or written data.

Results and Discussion

Protection of suspects, defendants and convicts in the process of the Indonesian criminal justice system as regulated in the Criminal Procedure Code can be seen as a step forward, however, in the investigation process, excessive discretion is used by the police, prosecutors, judges and community officials in imposing criminal charges. Force tends to cause human rights violations against suspects, defendants and convicts. Human rights violations also occur because there is no balance between the legal authority to carry out coercive measures possessed by each sub-system of the Criminal Justice System and the rights of suspects, defendants and convicts to file resistance when their human rights are violated.

When the sub-system of the Criminal Justice System abuses its authority criminally against them, coercive measures can also be carried out that are the same as the coercive measures that have been carried out against suspects, defendants and convicts. This coercive effort was carried out by the investigating judge as a form of mechanism to control discretionary decisions by law enforcement officials. To avoid fabricating cases against suspects, defendants, convicts by officers carrying out investigations, the Indonesian government must immediately ratify several provisions of international conventions, especially regarding the rights of suspects, defendants, convicts so that their rights can be protected from efforts by irresponsible parties.

The background to the introduction of Commissioner Judges is to better protect human rights guarantees in the criminal process and avoid congestion caused by differences between investigating officers from different agencies. Unlawful arrest and detention constitute a serious violation of people's fundamental rights to liberty and freedom. Unlawful confiscation is a violation of coercion and must be approved by the court. It is important for commissioner judges to reduce arbitrary actions carried out by law enforcement officers in carrying out coercive measures. In practice, victims experience many complaints regarding coercive measures carried out by law enforcement officers which are considered to violate human rights.

Several important things that encourage the construction of judge commissioners in reforming just procedural law in Indonesia, include:

1. Legal Irregularities in Pre-Prosecution

In pre-prosecution, the process that takes place is a juridical interaction between the public prosecutor and investigators to deal with criminal case files. This process starts from the public prosecutor receiving the case file from the investigator (Article 110 Paragraph 1 and Article 8 Paragraph 3 of the Criminal Procedure Code), then the public prosecutor examines it within 7 days and must notify the investigator that the file is not complete, then the public prosecutor return it to the investigator with instructions to be completed (Articles 138 Paragraph 1, 110 Paragraph 2 and Article 138 Paragraph 2 of the Criminal Procedure Code), and within 14 days it must be returned to the public prosecutor after being completed. If within 14 days the public prosecutor does not return the case files or before that has conveyed that the investigation is complete, then the investigation is complete and continues to the second stage where the suspect and evidence are handed over to the public prosecutor (Article 8 (3) b of the Code Criminal Procedure Law).

Considering that the legal basis regarding pre-prosecution in the Criminal Procedure Code does not explain it in detail, problems arise in pre-prosecution because there is no limit on how many times case files can be "passed back and forth" between the investigator and the public prosecutor and there is no definite determination. about when the public prosecutor is deemed to have failed to return the case

files resulting from the investigation beyond the 14 day period. So the time provided by the Criminal Procedure Code is 14 days (14 x investigators and public prosecutors = 28 days) is not maximization.

If the public prosecutor violates the time limit provided, the law cannot do anything, and neither can investigators, because the Criminal Procedure Code does not include legal sanctions so that they can violate each other in a legal vacuum. Faced with this legal vacuum, it is impossible for a vertical pre-trial to be enforced, for complaints from investigators to public prosecutors and from public prosecutors to investigators that have exceeded the time period determined by the Criminal Procedure Code, because in addition to the time provided, it is not maximized (either for investigators and public prosecutors), both "need" each other and are the same profession. There are also no legal sanctions that can be used as a repressive tool, so that those that can have a negative impact on those seeking justice can be "impeded", when asking the investigator, they answer that the case has been handled by the public prosecutor and vice versa.

2. Weak Pretrial Institutions

This pretrial institution is a control tool for law enforcers, especially investigators and public prosecutors. In practice, the pretrial decision is not executory, but only states that the termination of the prosecution is invalid by way of declaration. The difficulty of execution in this case can be understood because according to Article 270 of the Criminal Procedure Code, the prosecutor is the executor of the court decision.

Without the politico I will of the prosecutor's office to comply with the decision, there is no longer any party who can force the prosecutor to carry it out. Conditions like this are very detrimental to pre-trial applicants as reporting witnesses. Not to mention that not all elements of coercion can be pretrial, such as searches and confiscations. Judges in pre-trial look more at the formal side than the material of the case decision.

3. Potential Violations of Human Rights at the Investigative Level

Administrative violations at the inquiry and investigation level can occur in the form of mild to serious procedures. Several types of cases show violations of the suspect's rights, such as: a) Investigators do not notify the suspect of their right to be accompanied by legal counsel. b) Summoning the suspect does not pay attention to the time limit. c) Maximum detention, minimum investigative examination.

The provisions of Article 50 Paragraph (1) of the Criminal Procedure Code state that suspects have the right to immediately receive an examination by investigators and can then be referred to the public prosecutor. d) The right of the suspect to present a de charge witness e) Examination of witnesses is prohibited accompanied by a legal advisor Pay attention to the articles regarding Legal Aid including Article 69: Legal Advisors have the right to contact the suspect from the time he is arrested or detained at all levels of examination according to the procedures specified in the law -legislate this. f) Forcibly revoking a power of attorney, investigators often suggest or influence the examinee to revoke a power of attorney even though the legal advisor has carried out his duties well. The motivations are varied: Not compatible with the methods of assisting legal advisors which will endanger suspects and defendants. The provisions of Article 143 Paragraph (4) state that the derivative of the letter of delegation of the case along with the indictment is delivered to the suspect or his attorney or legal advisor and investigator, at the same time as the letter of delegation of the case to the court.

4. Deviations in Procedures Regarding Detention

The imposition of detention refers to the provisions of Article 21 of the Criminal Procedure Code which requires that an order for detention or further detention be carried out against a suspect or defendant who is strongly suspected of committing a criminal act based on sufficient evidence and

concerns about running away, losing evidence or repeating the crime. The provisions of this article contain negative actions as subjective opportunities to detain someone, for reasons of race, concern, which obviously depends on the subjective feelings of investigators, prosecutors and judges.

Likewise, Article 31 Paragraph (1) of the Criminal Procedure Code states that postponement of detention cannot be enjoyed by everyone, because it must be accompanied by certain conditions, which often makes the suspension of detention conditional on the amount of bail money not uniform. Deviations from the precedent of institutions appointed to carry out the function of prosecuting a criminal case as stipulated in Article 15 and Chapter b) Selecting a defendant who is not qualified so that the charges are obscured; c) Declare that the files are complete but the defendant has never been brought to trial; d) The public prosecutor pressures the defendant. Trial practice often results in the judge's dominance over the prosecutor and legal advisor.

The judge was very active where all the questions that were supposed to be asked by the public prosecutor to prove the charges were taken over by the judge. The questions asked by the judge seemed to represent the position of proving the public prosecutor's accusations, even though the public prosecutor and legal advisor were in the correct position. Concerning other difficulties resulting from requesting case files in the form of copies of trial minutes, there are many minutes of proceedings regarding the version of a witness's statement at trial, there is the court's version, there is the public prosecutor's version and there is the legal advisor's version. Likewise, due to the reason for the speedy trial, witnesses are examined in a marathon manner and the time is not equal to that of the prosecution witnesses.

The construction of Judge Commissioners as a replacement for pre-trial institutions based on Pancasila values in Indonesia emphasizes aspects of human values and social justice which are oriented towards protecting the rights of suspects in realizing respect, protection and defense of Human Rights (HAM). The Criminal Procedure Code which has been implemented currently still has shortcomings in its implementation, namely ignoring the human rights of victims, complainants and witnesses. Reform is not only seen in terms of substance or structure.

Construction of Secondary Regulations (formal criminal law) in Indonesia means reform in terms of formal criminal law by building culture and legal values from the principles of Pancasila. The construction of Judge Commissioners based on Pancasila values in Indonesia is to better protect human rights guarantees, especially for defendants or suspects in the criminal process against arbitrary actions by law enforcement officials. The basic idea of the policy for regulating Commissioner Judges is based on the weak condition of Pretrial in the current Criminal Procedure Code.

The Commissioner Judge is intended by the legislator to "correct" the experience of mass justice practices which are not in line with the upholding of human rights, as well as legalizing the human rights of suspects or defendants to defend their interests in the legal process. Development of national criminal procedural law, based on the philosophy/view of life of the nation and the foundations of the state (Pancasila) which animates every article or paragraph and reflects the protection of human rights and the obligations of citizens.

The presence of a Judge Commissioner in terminating the Draft Law on the Criminal Procedure Code is a necessity considering that his presence is an inseparable part of the judicial process against a defendant, where the Judge Commissioner can carry out supervision and can also provide protection for the human rights of investigators. and the Prosecutor in the examination process. Law is manifested in statutory regulations enforced by authorities at the state level. A norm or rule is only seen and recognized as law if the norm is explicitly transformed into a societal norm with orders from state authorities as outlined in statutory regulations. In this case, the Government should play a more active role in efforts through outreach to Investigators and Public Prosecutors regarding the existence of Judge Commissioners as an effort to protect the Defendant from Case Fabrication

References

- Adji, Indriyanto Seno. (2011). *Criminal Procedure Code in Perspective*. Jakarta: Didit Media.
- Adji, Indriyanto Seno. (2022). *Pre-trial or Judge Commissioner: Ideas towards Expanding Authority. Paper presented at the Socialization of the Bill on the Criminal Procedure Code which was held by the Directorate General of Legislation and Regulations of the Department of Justice and Human Rights in Jakarta.*
- Arief, Amrullah M. (2006.) *Corporate Crime*. Malang: Bayumedia Publishing.
- Arief, Barda Nawawi. (2002). *Bunga Rampai, Criminal Law Policy*. Bandung: PT. Image of Aditya Bhakti.
- Assidiqie, Jimly. (2004). *State Institutional Format and Shifts in Power in the 1945 Constitution*. Yogyakarta: FH-UUI Press.
- Bhardwaj, H.R. (2011). *Crime, Criminal Justice & Human Rights*, New Delhi: Konark Publisher Pvt. Ltd.,
- Chamelin, Neil C. (2009). *Introduction to Criminal Justice*. New Jersey: Prentice-Hall.
- Hamzah, Andi. (2008). *Offenses Outside the Criminal Code*. Jakarta: Sinar Graphics.
- Syamsuddin, Amir. (2008). *In Discussion of the Criminal Procedure Code Bill Towards Renewing the Concept of Judge Commissioner, Jakarta, on February 13th.*
- Supanto. (2010). *Global Economic Crime and Criminal Law Policy*. Bandung: Alumni.
- Ubbe, Ahmad. (2009). *Court Process in Criminal Cases*. Jakarta: BPHN- Ministry of Law and Human Rights.
- Yanto. (2010). *Judge Commissioner in Efforts to Protect Human Rights (Doctoral Dissertation)*, Jakarta: FH Jayabaya.
- Yesmil, Anwar, and Adang. (2008) *Criminal Law Reform: Criminal Law Reform*. Jakarta: Grasindo.
- Bakytkaliyevna, Chazhabaeva Aynur. (2008) *Al-Farabi Kazakh National, undergraduate degree of Criminal Law, Criminal Procedure and Criminalistics, JOURNAL: The Faculty of Law of Kazakhstan National University.*
- Nazerke, Zhanasbayeva. (2018) *JOURNAL of the Torgautova Faculty of Law Balgyn Amyrbekovna, Turan University, candidate of jurisprudence, the Faculty of Law.*
- Bakytkaliyevna, Chazhabaeva Aynur. (2019). *Al-Farabi Kazakh National university, undergraduate of chear of Criminal Law, Criminal Procedure and Criminalistics, JOURNAL: Problem of the expansion of judicial control at the pre-trial stage of criminal proceedings, Faculty of Law Kazakh National University.*
- Zhanasbayeva Nazerke, *JOURNAL the Faculty of Law Torgautova Balgyn Amyrbekovna, University Turan, candidate of jurisprudence, the Faculty of Law, (2018).*

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).