



THE AUTHORITY COMMISSIONER JUDGE'S IN THE CRIMINAL JUSTICE SYSTEM

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Abstract

The purpose of the existence of a commissioner judge to provide more guarantees of the protection of the human rights of a person who is a suspect/defendant in the criminal justice process. With the presence of a judge commissioner to prevent differences of opinion regarding the validity of legal actions in the preliminary examination, namely regarding the validity of arrest, detention, search and seizure because these legal actions are related to human rights issues that are determined as suspects/defendants namely regarding independence and freedom, ownership of the wealth and protection against security and security. The method used in this research is descriptive-analytical method with the main approach is juridical normative. The result of this research is guaranteed protection of the rights of suspects/defendants at the preliminary examination stage as an embodiment of the function of criminal procedural law, namely holding a fair trial in order to find material truth or ultimate truth. And the forced effort made by the Investigator to obtain sufficient preliminary evidence is not only left unilaterally to the investigator but there must be a test conducted by a commissioner judge.

Keywords— judge commissioner, pretrial, investigating judges

I. INTRODUCTION

The duties and authority of Judge Commissioner during the validity of the Reglement op de Strafvordering (The criminal procedure code) is very broad and is accompanied by the right to make forced efforts against witnesses and suspects. This can be understood, because the position of the prosecutor as a hulp-magistrate (part of the prosecution system) who investigates the instructions and directions given by the judge.

However, this authority only takes place before the case is transferred to the trial of a panel of judges who will issue a decision regarding the conviction or release of a defendant. Therefore, it can be said that the institution of the Judge Commissioner in effect in the SV period is a pre-trial institution that checks the suitability of a case



submitted to the court, so it is expected that each case submitted to the court is truly supported by strong evidence and prevent innocent people from being punished (Saad, 2014).

Supervision of the commissioner's judge, basically is the right of control of the judiciary (control van rechterlijkemacht) of the executive. For this reason, the commissioner judge is given such broad authority to intervene in the field of duties of the investigator and the public prosecutor in the preliminary examination. However, it must also be remembered that the application of the concept of the Judge Commissioner means hanging someone's independence from the state, especially the judicial authority to carry out its supervisory function towards the executive (investigator and public prosecutor). Given the vital role of the Judge Commissioner, the appointed judge must be truly fair and have proven his integrity.

In its implementation, one thing that also needs to be considered is how the position of commissioner judge if he is appointed in remote areas where pretrial cases are very minimal [vide Article 76 paragraph (2) of the HAP Bill]. This can prevent the commissioner judge from doing his job due to the absence of a pretrial hearing. Lest there will be no career judges who want to be appointed as Commissioner Judges in the regions, because there are no jobs. In addition, the provisions for appointing judges of commissioners by the Minister of Justice and Human Rights need to be considered given that the judicial authority is currently in the hands of the Supreme Court based on Law Number 5 of 2004 concerning the Supreme Court.

Thus, the presence of a pretrial institution is a turning point and gives new enthusiasm, especially regarding guarantee of the rights of the suspect, because it is transparent and public accountability is a prerequisite for the establishment of a free and impartial justice system and upholds human rights. The existence of Commissioner Judges in Europe and North America uses the concept of an investigating judge or investigating magistrate. In the Netherlands it is called rechter commissaris, in France judge d'instruction. In Italy it is called giudice istruttore (until 1989). In Spain it is called juez de intrusion. In Germany it is called unschuhungsrichter and in the United States is equivalent to magistrate (in the state/states and at the national/federal level) (Hamzah, 2014).

In the draft Criminal Procedure Code which is considered necessary in the change of pre-trial including the role of judges, as the basic concept of criminal justice for judges from the beginning of the examination of criminal cases must have a role. The draft Criminal Procedure Code must be included by the Judge Commissioner. The Board of Commissioners will be authorized to assess the investigation and prosecution and other authorities specified in the Act, including the imposition of coercive measures. Then



the authority of the commissioner judge in the investigation stage needs to coordinate with the investigator and the public prosecutor.

II. RESEARCH METHODS

The method used in this research is descriptive analytical method with the main approach is juridical normative. Descriptive analytical means describing and depicting something that is the object of research critically through qualitative analysis. Because what you want to study is within the scope of legal science, the normative approach includes: legal principles, synchronization of laws and regulations

III. DISCUSSION

The duties and authority of the Judge Commissioner is carried out with a request or without a request by the suspect or defendant, family, or his proxy to the Judge Commissioner. Thus, the actions of the Judge Commissioner at the preliminary examination stage are active, and function both as examining judges and investigating judges (Maringka, 2018). Admittedly, the duties and powers of Judge Commissioner as formulated in the Criminal Procedure Bill are apparently broader than the pretrial Judge's authority. Because it is not only limited to arresting and detaining or stopping investigations and prosecutions but also regarding whether the detention or search is to be continued or extending detention, it is necessary to stop the investigation or prosecution, it is necessary to revoke the cessation of the investigation or prosecution, whether or not confiscation and search is conducted, and the authority to order the cessation of investigations or prosecutions. the investigator or public prosecutor to release the suspect or defendant if there is a strong suspicion of torture or violence at the investigation or prosecution level.

The establishment of a Judge Commissioner system that has broad and more detailed duties and authorities is an improvement to the Pretrial (Putra, 2015). So that the prospect of regulating Judges of the Commissioner in the coming Criminal Procedure Code is to make the new Criminal Procedure Code in order to fulfill the expectation of being a protector as well as a humane, transparent, and accountable (accountable) legal instrument or to provide legal certainty, justice, and benefit for the community. No further violence or torture will be heard as well as any means to obtain information, whether from the suspect or witness. Because with the Criminal Procedure Code that will come through the Commissioner Judge system, it is functioned to supervise and control law enforcement officers in carrying out their duties so that there is no abuse of authority by law enforcement officials.

It is time for the Investigating Judges to be replaced by the Pretrial. In this case, the author takes the position to expand the authority of the investigating judge in



overseeing the actions and discretion held by law enforcement officers, including the police, prosecutors, judges in court and correctional institutions. The investigating judge will have the authority to examine law enforcement (a sub-system of the criminal justice system) suspected of committing human rights violations against suspects, defendants and convicted persons (Adha, 2015). In addition to the authority to conduct an examination of defendants whose human rights have been violated, witnesses and evidence, the investigating judge is also authorized to give orders for detention, search and other coercive measures.

Investigating judges who differ from the trial judge or zittingrechter are judges who examine the police, prosecutors, judges, prison personnel who perform their duties unlawfully for the defendants, defendants and convicted persons. The existence of an investigating judge will be able to protect the rights of suspects at every level. The Investigating Judge is given declaratory and conditional authority. Prosecution based on or known as malice prosecution based on abuse of prosecution must be immediately stopped by the Investigating Judge in the interests of suspects and defendants to avoid violating human rights protection. Abuse of power by judges in court and in prisons is also the object of investigation by investigating judges. With the formation of an investigative judge, good procedural law objectives (due process of law or behavior strafprocessrecht) will be achieved (Denning, 1981).

The scope of power and authority of the Investigating Judge protecting defendants should be applicable to the suspects in the Court, the judge examining the case must immediately order the suspension of detention as well as the cancellation of the indictment by law because the indictment was made against the law. The basis for the establishment of this investigating judge institution is that there have been many violations of the rights of suspects, defendants and convicted persons committed by law enforcement officials including the police, prosecutors, courts and correctional institutions. With the establishment of this institution, the investigating judge will have the authority to examine law enforcement officials suspected of committing human rights violations against suspects, defendants and convicted persons.

Forms of human rights violations committed by law enforcement officials include carrying out detention in the process of arrest, detention, prosecution of the court and in the process of training in prison institutions. With these deviations, the new Criminal Procedure Code Draft needs to be strictly regulated regarding sanctions that can be imposed on investigators, public prosecutors, judges and prison officers who commit these deviations. Although Article 333 of the Criminal Code has regulated criminal sanctions against persons deprived of their liberty, these provisions only regulate human rights violations in general and in practice these provisions are not used or



imposed on law enforcement officials who commit irregularities in the process of arrest, detention, court prosecution or in the fostering process in a penitentiary.

IV. CONCLUSION

The establishment of a Judge Commissioner system that has broad and more detailed duties and authorities is an improvement to the Pretrial. So that the existence of the Judge Commissioner system makes the Criminal Procedure Code that will come to meet expectations to be both protective and legal instruments that are humane (humane), transparent, and accountable (can be accounted for) or provide legal certainty, justice, and benefits to the community.

The existence of a commissioner judge with the intention to provide more guarantees of the protection of the human rights of a person who is a suspect / defendant in the criminal justice process. With the presence of a judge commissioner to prevent differences of opinion regarding the validity of legal actions in the preliminary examination, namely regarding the validity of arrest, detention, search and seizure because these legal actions are related to human rights issues that are determined as suspects / defendants namely regarding independence and freedom, ownership of the wealth and protection.

REFERENCES

- Saad, N. (2014) Tax knowledge, tax complexity and tax compliance: Taxpayers' view. *Procedia-Social and Behavioral Sciences*, 109, 1069-1075. 2014.
- Andi Hamzah. Relationship Between Investigator and Prosecutor In Draft Of Indonesian Criminal Procedural Law (RKUHAP). (2014) TEROPONG Indonesian Journal of Judiciary, Vol. 2, July – December 2014
- Maringka, Rifaldi Jesaya.(2018) "Pembentukan Lembaga Hakim Komisaris Dalam Upaya Mereformasi Hukum Acara Pidana Indonesia Menurut Undang-Undang No 8 Tahun 1981." *Jurnal Hukum Unsrat* 23.10. 2018.
- Putra, Sandi Prisma. (2015) "Urgensi Lembaga Hakim Komisaris Sebagai Alternatif Pengganti Lembaga Praperadilan." *Scientica*. 2.2. 2015.
- Denning, Alfred Thompson Denning Baron. (1981) *The family story*. Lexis Law Publishing (Va), 1981.
- Adha, Noor Ichwan Ichlas Ria. (2015) "Hakim Komisaris (Apresiasi Terhadap RKUHAP)." *Jurnal Hukum dan Peradilan* 4.3. 2015.