

THE AUTHORITY OF JUDGES IN GOVERNING THE EXCLUSIONARY RULE IN INDONESIA'S CRIMINAL JUSTICE SYSTEM

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Abstract

The doctrine of criminal evidence, encapsulated in the maxim *in criminalibus probationes debent esse luce clariores*, establishes that the evidence presented in criminal proceedings should be as transparent as light. This requirement entails that evidence—both in its formal dimension and in its material substance—must be subject to rigorous testing concerning the legality and authenticity of its acquisition. Nevertheless, the evidentiary process frequently encounters problems in both formal and material respects. Judicial scrutiny of evidentiary quality and admissibility includes, among others, examining whether documentary evidence was obtained through unlawful means or produced under circumstances that undermine its validity. Employing a normative juridical research method, this study investigates the judicial application of the Exclusionary Rules of Evidence in Indonesia's criminal justice system through statutory and conceptual approaches.

Keywords: *Exclusionary Rules, Evidence, Judges.*

INTRODUCTION

The evidentiary process within the criminal justice system constitutes a core principle that must be rigorously observed and upheld by both the Police and the Prosecutor's Office. This necessity arises from the fact that the administration of criminal justice ultimately hinges upon the judge's capacity to reconstruct the factual occurrence of the alleged crime and to ascertain whether the defendant has indeed committed the offense and may consequently be held criminally liable.¹ Proof is the process of affirming the truth of a given event in such a manner that it is deemed rationally acceptable, with respect to the criminal occurrence that is to be brought before the judge for adjudication and final judgment.² Thus, it cannot be justified if such actions are carried out without a clear evidentiary foundation, as this would ultimately result in the occurrence of injustice.³ Pursuant to the Indonesian Code of Criminal Procedure (KUHP), the process of judicial decision-making is structured in such a way as to enable judges to seek the realization of material truth, or at minimum, to approach the essence of ultimate truth in the resolution of criminal cases.⁴ The judge realizes this by anchoring his or her judicial conviction in the evidence and/or exhibits adduced before the court.⁵ After such conviction has been formed, the judge may proceed to render a decision in the criminal proceedings.⁶ A judge must exercise careful deliberation in appraising the evidence introduced at trial, for such appraisal underlies the determination of whether the accused may justly be adjudged guilty and subjected to criminal liability. From the author's perspective, judicial conviction cannot be limited to the notion that, on the basis of "the statutory minimum of two items of evidence", the defendant may be deemed proven and thereby held liable under criminal law. Rather, such conviction requires the judge to ascertain that the evidentiary materials brought before the court were not procured through unlawful means and are consistent with the governing

¹ Saanin Basri, *Psikiater dan Pengadilan Psikiatri Forensik Indonesia*, Ghalia Indonesia, Jakarta, p.13.

² Hari Sasangka dan Lily Rosita, *Hukum Pembuktian dalam Perkara Pidana*, Mandar Maju, Bandung, 2003, p. 11.

³ Eddy O.S. Hiarij, *Teori & Hukum Pembuktian* (Cetakan Pertama), Erlangga: Jakarta, 2012, p.3.

⁴ Andi Hamzah, *Hukum Acara Pidana di Indonesia*, PT Sinar Grafika, Jakarta, 2000, p.4.

⁵ Aria Zurnetti dkk, *Pengantar Hukum Acara Pidana Indonesia*, PT Raja Grafindo Persada, Depok, 2021, p. 20.

⁶ Muhammad Prodjohamidjojo, *Tanya Jawab KUHP (UU Nomor 8 Tahun 1981)*, Ghalia Indonesia, Jakarta, 1981, p. 123.

legal framework.⁷ In practice, the evidentiary process has been marked by a range of problems at both the formal and material levels.⁸ It must be recognized that the procurement of evidence and exhibits often involves coercive actions that conflict with the fundamental rights of suspects or defendants.⁹ Each act of coercion inherently poses a risk of human rights violations and, consequently, contravenes the fundamental principle of the presumption of innocence

A. Research Method

The present study employs a normative juridical research method, which aims to explore and analyze the manner in which judges implement the *Exclusionary Rules of Evidence* within the Indonesian criminal justice system.¹⁰ This research is directed toward examining the application of legal principles and norms in connection with the issues under consideration, and it is grounded on legal sources through an in-depth review of theories, concepts, legal principles, and statutory provisions relevant to the research topic. The methodological approaches adopted in this research consist of the statutory approach and the conceptual approach. The statutory approach is implemented by examining statutory regulations and jurisprudence pertinent to the judicial application of the *Exclusionary Rules of Evidence* in criminal proceedings. Meanwhile, the conceptual approach is conducted by analyzing legal doctrines and scholarly perspectives in a manner that provides a conceptual foundation. Through this approach, the research aspires to contribute to the development of legal science and to the discovery of legal concepts that are relevant to the problems addressed in this study.¹¹

RESULTS AND DISCUSSION

Exclusionary Rules in Criminal Proceedings in Indonesia

*In its most fundamental form, the concept of the Exclusionary Rules of Evidence may be described as the authority of the court (judge) in criminal proceedings to exclude a piece of evidence if its prejudicial effect outweighs its probative value. This authority is limited in nature, as it may be exercised even after the evidence has been deemed relevant and, within the framework of statutory regulations, admissible.*¹²

Comparatively, the doctrine of exclusionary rules has been more extensively developed within the Anglo-American (common law) legal tradition, where courts often apply the principle to deter unlawful investigative practices and to safeguard constitutional rights. In such jurisdictions, evidence obtained in violation of procedural or constitutional guarantees may be declared inadmissible, even if it is materially relevant to the case. By contrast, in civil law systems such as Indonesia, the application of exclusionary rules remains relatively limited and is primarily framed within statutory provisions. The role of judges, therefore, becomes crucial in balancing the admissibility of evidence against the protection of the rights of the accused, while ensuring that the integrity of the criminal justice process is maintained. Thus, the study of exclusionary rules in the Indonesian context must be situated not only within the statutory and jurisprudential framework but also in light of comparative perspectives. This approach enables a more comprehensive understanding of how exclusionary rules operate in practice and how they may contribute to the development of procedural fairness and the protection of fundamental rights in the Indonesian criminal justice system. This principle governs the authority of judges in criminal proceedings to exclude or disregard evidence presented by the public prosecutor before the court.¹³ The principle was first developed within the legal system of the United States, originating from the Fourth Amendment to the U.S. Constitution. The Amendment guarantees the right of individuals to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, which shall not be violated, and further provides that no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things

⁷ Amadeus Anugrah Dharmawan dan Bambang Santoso, *Kesesuaian Alat Bukti Petunjuk Pada Pembuktian Tindak Pidana Pornografi melalui Media Elektronik*, Verstek, Vol. 11, Issue. 4, 2023, p. 709.

⁸ Formally, this refers to coercive measures undertaken to obtain evidence or physical items—such as arrest, detention, seizure, and search—carried out without a valid legal basis, such as a proper warrant. Substantively, it refers to situations in which, although a warrant has been issued, the implementation is conducted unlawfully, for instance, involving torture, threats, or intimidation.

⁹ Hasan Basri, *Perlindungan Hukum Terhadap Pelaku Tindak Pidana Berdasarkan Sistem Peradilan Pidana Indonesia*, SIGn Jurnal Hukum, Vol. 2 No. 2, Oktober 2020, p. 104.

¹⁰ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Citra Aditya Bakti, Bandung, 2004, p. 57.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2006, p. 2.

¹² Siyuan Chen, *The Judicial Discretion to Exclude Relevant Evidence: Perspectives from an Indian Evidence Act Jurisdiction*, *International Journal of Evidence and Proof*, Vol. 16, No. 4, 2012, p. 4.

¹³ Randy E Barnett, *Resolving the Dilemma of the Exclusionary Rule: An Application of Restitutive Principles of Justice*, 32 *Emory L* (1983) 32 *Emory Law Journal* 937.

to be seized.¹⁴ The jurisprudence established in *Mapp v. Ohio* (1961), under the authority of the Fourth Amendment, affirmed that any evidence obtained through unconstitutional methods—such as unlawful searches and seizures—cannot be admitted in criminal proceedings. By articulating this principle, the Court elevated the exclusionary rule into a constitutional doctrine, emphasizing that the enforcement of individual rights cannot be compromised for the sake of expediency in prosecution. In doing so, the Court strengthened the normative foundation of due process and highlighted the judiciary's responsibility to ensure fairness and legality within the criminal justice system. This theory is also known as the *Fruit of the Poisonous Tree* doctrine and the *Nullity* doctrine, both of which emphasize that the results of investigation and prosecution against a suspect or defendant are rendered meaningless if they originate from a contaminated process.¹⁵ Such contamination leads to the evidence obtained and presented at trial being classified as *tainted evidence*. The taint may arise in various circumstances, such as searches conducted without proper legal basis or incriminating statements extracted in violation of the fundamental rights of the suspect or defendant.¹⁶

Historically, the *Fruit of the Poisonous Tree* doctrine originated in the jurisprudence of the United States. It was first articulated in *Silverthorne Lumber Co. v. United States* (1920), where the Supreme Court held that evidence obtained directly or indirectly from an illegal search could not be admitted in court. The principle was further reinforced in *Nardone v. United States* (1939), where the Court excluded not only the illegally obtained evidence itself but also derivative evidence—sometimes referred to as “secondary evidence”—that stemmed from the initial illegality. These cases firmly established the doctrine as an extension of the exclusionary rule, ensuring that the unlawful conduct of law enforcement would not yield admissible evidence in criminal proceedings.

By embedding this doctrine into American constitutional law, the judiciary underscored the principle that the integrity of the legal process cannot be preserved if evidence contaminated by illegality is permitted in court. Indonesian criminal procedure law does not explicitly regulate the application of the exclusionary rule by judges. Nevertheless, in practice, judges have exercised the authority to exclude evidence in certain cases. For example, in Supreme Court Decision No. 545K/Pid.Sus/2011, the Court ruled that where acts of torture were found to have been committed against the defendant during the investigation and the preparation of the official investigation report, the resulting evidentiary foundation of the case—upon which the indictment against the defendant SS, who was charged with possession of a Category I narcotic and illegal firearms, had been based—was deemed unlawful. Consequently, the judgment of the lower court (*Judex Facti*) was annulled. In contrast to Law No. 8 of 1981 concerning the Indonesian Code of Criminal Procedure (KUHP), the Draft Criminal Procedure Code (RKUHP) provides, at the very least, a framework for the authority of judges to exclude evidence in criminal proceedings. This is explicitly regulated under Article 222 paragraphs (4) and (5), which state as follows:

“Par. (4) Judges shall have the authority to assess the authenticity and legality of the evidence submitted and Par. (5) Evidence that is declared by the judge to be unauthentic and/or obtained unlawfully shall not be admissible in court proceedings and shall have no probative value”. Normatively, these provisions signify a progressive development in Indonesian criminal procedure, as they explicitly recognize the authority of judges to exclude unlawfully obtained evidence. Unlike the current KUHP, which remains silent on the legal consequences of evidence acquired through procedural violations, the *RKUHP* seeks to provide a clearer legal foundation for the application of exclusionary principles. This development reflects a gradual shift toward strengthening the protection of due process rights and aligning Indonesia's criminal justice system with international standards that emphasize the inadmissibility of tainted evidence. At the same time, the inclusion of such provisions in the *RKUHP* highlights the judiciary's central role in safeguarding the fairness of criminal proceedings. By granting judges explicit authority to assess both the authenticity and legality of evidence, the draft code acknowledges that the integrity of the judicial process depends not merely on the relevance of evidence but also on the lawfulness of its procurement. The authority of judges to set aside and/or exclude evidence presented before them, in the author's view, is grounded in several factors as follows:

1. It is the duty of a judge to ensure the credibility and integrity of the criminal examination process in court.
2. A paradigm shift recognizing that the defendant is a subject, rather than an object, of the criminal justice process.
3. A paradigm shift in law enforcement oriented toward the protection of human rights.

¹⁴ 4th Amendment of The United States of America.

¹⁵ Raed S. A. Faqir, *The Exclusionary Rule of AI-Enhanced Digital Evidence in The United States And UEA: Comparative Analysis*, Vol. 59, No.1, February 2024, p. 78.

¹⁶ Margaret K. Lewis, *Controlling Abuse to Maintain Control: The Exclusionary Rule in China*, International Law and Politics, Vol. 43, No. 629, 2011, p. 637.

In practice, there is often a tendency to assume that the evidence presented at trial is automatically authentic and legally valid, both materially and formally, simply because the defendant and/or their legal counsel did not raise objections during the pretrial stage, such as through a pretrial judicial review (*Praperadilan*). However, in the author's view, the pretrial review institution only examines the evidence and/or exhibits from a formal perspective, not from a material one. In criminal trials, it must be acknowledged that the main focus of proof is whether the defendant's actions fulfill the elements of the offense as charged by the public prosecutor, while the defendant, in their defense, seeks to demonstrate that they did not commit the alleged act. This raises the question of how and when the authenticity and legality of evidence submitted by the public prosecutor are to be examined by the judge, so that the judge can properly assess and evaluate such evidence.

Exclusionary Rules by Judges in Criminal Trial Proceedings

The constitutional debate on whether *tainted evidence* can be used in criminal proceedings has been settled by the Constitutional Court through Decision No. 20/PUU-XIV/2016, which held that evidence obtained unlawfully and in violation of statutory regulations cannot be used as valid evidence. A subsequent issue arises when a pretrial (*Praperadilan*) decision declares that the search and seizure conducted by investigators were lawful. The question then is whether, on a substantive level, the evidence resulting from such searches and seizures is also valid, and whether the criminal trial judge lacks the authority to assess the authenticity and legality of such evidence. For instance, in the *cyanide coffee* case, the primary evidence used in the trial was CCTV footage from Café Olivier, which sparked significant debate over whether the recording constituted *tainted evidence* and whether it could be admitted in the criminal trial. In the author's view, judges have several means to examine the authenticity and legality of evidence, as provided under Article 184 of the Indonesian Code of Criminal Procedure (KUHAP), which governs the presentation of evidence by the public prosecutor. These mechanisms enable the judiciary to ensure that only authentic and lawfully obtained evidence is relied upon in the adjudication process as follows:

a. Exclusion of Evidence by Judges Based on the Assessment of Witness Evidence Quality

Article 185, paragraph (6) of the Indonesian Code of Criminal Procedure (KUHAP) stipulates that, in assessing the truthfulness of a witness's testimony, the judge must consider the following factors:

1. The consistency between the testimony of one witness and that of other witnesses;
2. The consistency between the witness's testimony and other pieces of evidence;
3. Any possible motives or reasons that may influence the witness to give a particular statement; and
4. The witness's lifestyle and moral character, as well as any other factors that generally may affect the credibility of the testimony.

From a normative perspective, these provisions have become insufficient in guiding modern criminal trials. They fail to regulate instances in which witnesses are subjected to extreme pressure, violence, or torture, or where testimony may be strategically manipulated to incriminate the defendant. Furthermore, in the age of live-streamed trials, witnesses may be influenced by previous proceedings, resulting in contaminated testimony. In such situations, it should be formally recognized that judges have the authority to set aside and render such witness statements inadmissible as evidence;

b. Exclusion of Documentary Evidence by Judges through Assessment of Its Authenticity and Reliability

In criminal proceedings, documentary evidence presented by the public prosecutor, even if obtained through searches and seizures conducted by investigators, must be subject to judicial scrutiny to ensure its authenticity and validity. The judge has the authority to assess whether the content and conformity of such documentary evidence are materially reliable—a determination that cannot be fully addressed during the pretrial stage (*Praperadilan*). Through this assessment, the judge ensures that the submitted documents are materially untainted and can legitimately be used to substantiate the elements of the offense as charged by the public prosecutor against the defendant. This authority is reinforced by Articles 184 and 185 of the Indonesian Code of Criminal Procedure (KUHAP), which provide the framework for the evaluation of evidence submitted in court. Article 184 stipulates the forms of evidence that may be presented, including documentary evidence, while Article 185 guides the judge in assessing the credibility, authenticity, and probative value of both witness testimony and documentary evidence. By exercising this authority, judges can effectively exclude evidence that is contaminated, fabricated, or otherwise unreliable, thereby upholding procedural fairness and ensuring that only authentic and lawful evidence forms the basis of a criminal conviction. This practice reflects the broader principle of the exclusionary rule, emphasizing that evidence must not only be relevant but also obtained and presented in accordance with legal and ethical standards.

c. The exclusion of evidence by the judge is carried out based on the examination of the quality of evidence in the form of the defendant's testimony;

The defendant's testimony refers to statements made by the defendant during trial regarding actions they have committed, personally witnessed, or personally experienced. However, in practice, the defendant's testimony often originates from statements made by the suspect during the investigation and prosecution stages. This situation frequently gives rise to problems, as suspects may be subjected to threats, violence, or even torture during the examination process, resulting in the defendant retracting their statements during the investigation or prosecution. In prevailing practice, based on Supreme Court Decisions Number 414/K/Pid/1984 and Number 1043 K/Pid/1987, any retraction of the defendant's testimony during trial must be justified; if the retraction is without justification, it may serve as corroborative evidence indicating the defendant's culpability. In its jurisprudential development, the Supreme Court, through Decision Number 545K/Pid.Sus/2011, ruled that if it is found that a defendant was subjected to torture during the investigation and the preparation of the *Berita Acara Pemeriksaan* (BAP), which served as the foundation for the indictment, then the underlying case used to draft charges against the defendant SS—who was accused of possessing or controlling Class I narcotics and illegal firearms—is considered legally unjustifiable. Consequently, the judgment rendered by the *Judex Factie* was annulled. Such authority should be rigorously regulated within the criminal case examination process. Evidence obtained unlawfully, particularly during the examination of witness and defendant testimony, cannot be adequately addressed merely by summoning witnesses to provide oral statements. Substantively, such testimonies are likely to contradict the statements of witnesses and defendants who have been subjected to threats, acts of violence, or even torture, thereby raising serious concerns regarding their reliability and validity.

CONCLUSION

The application of the Exclusionary Rules in Indonesian criminal proceedings serves as a crucial instrument for ensuring justice, protecting fundamental rights, and maintaining the integrity of the criminal justice system. Although the current Indonesian Criminal Procedure Code (KUHP) does not explicitly regulate the mechanism for judges to exclude evidence, judicial practice demonstrates that judges possess the authority to evaluate the authenticity and legality of evidence, including witness and defendant testimony as well as documentary evidence submitted by the public prosecutor. Supreme Court decisions have illustrated that evidence obtained through unlawful practices, such as torture or coercion of suspects, can result in the annulment of indictments and lower court judgments. Normative reforms proposed in the Draft Criminal Procedure Code (RKUHP) explicitly strengthen judicial authority to exclude unlawfully obtained evidence, reflecting a shift toward safeguarding due process rights and aligning Indonesian practice with international standards. Consequently, judges play a central role in ensuring that only authentic, lawful, and reliable evidence forms the basis of criminal convictions, upholding both substantive and procedural justice within the Indonesian criminal justice system.

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