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Legal Vacancy in the Application of Exclusionary Rules of Evidence in the Process of Proving Narcotics Crimes in Indonesia

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Abstract: Evidence in narcotics cases plays a crucial role in determining substantive justice for the accused. One issue that arises in legal practice in Indonesia is the use of illegally obtained evidence, which has the potential to violate human rights and the principle of due process of law. In the modern criminal law system, the principle of exclusionary rules of evidence is recognized, namely, rules that exclude or reject evidence obtained unlawfully from being used in court. This principle aims to prevent abuse of authority by law enforcement officers and maintain fairness in the criminal justice system. However, in Indonesia, regulations regarding exclusionary rules of evidence are not explicitly regulated in the Criminal Procedure Code (KUHAP) or other laws and regulations, resulting in a legal vacuum in their application, especially in narcotics cases that often involve wiretapping, searches, and seizures by law enforcement officers. This study aims to analyze the legal regulations related to exclusionary rules of evidence in Indonesian criminal procedure law and identify legal vacuums in their application to evidence in narcotics crimes. This research employs a normative juridical method with a statutory and conceptual approach. The data used was obtained through a literature review of relevant legal regulations, legal doctrine, and court decisions. Using this approach, this research seeks to provide recommendations for legal reform that can address the legal gap in the application of exclusionary rules of evidence in Indonesia, particularly in handling narcotics crime cases, in order to align with the principles of due process of law and human rights protection.

Keyword: Exclusionary Rules of Evidence, Proof, Narcotics Crime, Legal Gap, Criminal Procedure Law.

INTRODUCTION

The urgency of exclusionary rules of evidence in the criminal procedure system cannot be ignored in a legal system that prioritizes the principles of justice and legal certainty (Ramadhani, 2024). In criminal procedural law, proving is a crucial step in upholding justice, where every piece of evidence presented must meet legal standards to be used to prove the guilt or innocence of the accused (Rohman et al., 2024). However, in practice, evidence is

often obtained through unlawful means, such as illegal wiretapping, unauthorized searches (Articles 38–39 of the Criminal Procedure Code), or coercion to obtain confessions from suspects. This situation has given rise to debate regarding the validity of such evidence and its implications for the rights of the accused, including the principle of fair trial and the protection of human rights as guaranteed by Articles 28D and 28G of the 1945 Constitution (Hawasara, Sinaulan, & Candra, 2022).

The primary principle of the criminal evidentiary system is the principle of legality, which requires all actions in the judicial process to be based on applicable law (Iskandar et al., 2024). In the evidentiary process, this principle emphasizes that the evidence used must be obtained legally and in accordance with the provisions of the Criminal Procedure Code, including Article 184 concerning valid evidence and Articles 38–39 concerning searches and seizures. Furthermore, the Indonesian criminal justice system upholds the principles of fair trial and the protection of human rights, as guaranteed by Articles 28D and 28G of the 1945 Constitution, to ensure that every individual receives a fair and impartial process (Fernando, 2021). If evidence is obtained through unlawful means, such as through torture or invasion of privacy, the principles of fair trial and the protection of human rights are violated, thus jeopardizing substantive justice in the criminal justice process (Dinata & Suprijatna, 2024). The concept of exclusionary rules of evidence was developed as a protective mechanism against abuse of authority by law enforcement officials and to ensure a fair trial. This principle essentially asserts that evidence obtained through unlawful means cannot be used in court (Ramadhina, Haryanti, & Efridadewi, 2022). The primary purpose of exclusionary rules is to deter law enforcement officials from committing violations in obtaining evidence, while also protecting the rights of defendants from arbitrary action. With the implementation of these rules, it is hoped that law enforcement will not only focus on the final outcome of punishment but also on a fair process (Djiwandono, Ylma, & Sella, 2024).

Several forms of exclusionary rules have developed within criminal law doctrine, one of which is the "fruit of the poisonous tree" doctrine. This doctrine states that if primary evidence is obtained illegally, then all derivative evidence derived from that evidence cannot be used in court (Putri, 2024). For example, if a search is conducted without official authorization and certain evidence is found, then that evidence and all information obtained from it cannot be used as evidence. Furthermore, there are exceptions to the application of this rule, such as the good faith exception, which allows evidence to be used if law enforcement officers acted in good faith and believed their procedures were lawful (Gonzalez & Barrera, 2023).

In addition to the good faith exception, there is also the concept of inevitable discovery, which is another exception to the application of exclusionary rules. This doctrine states that if evidence is ultimately discovered lawfully, even though it was previously obtained through unlawful means, then that evidence can still be used in court (Latifah, 2021). For example, if police conduct a warrantless search and find evidence, but a prior legitimate investigation has led to the possibility of the discovery of that evidence, then that evidence can still be presented. The application of these doctrines demonstrates that exclusionary rules are not absolute but consider the balance between effective law enforcement and protecting the rights of the accused. In Indonesia, this kind of mechanism has not been explicitly regulated in the Criminal Procedure Code or other laws and regulations, thus creating a legal vacuum in the application of exclusionary rules in the criminal evidence process, especially in narcotics cases.

The Anglo-Saxon legal system, as practiced in the United States and the United Kingdom, is one of the strictest in applying exclusionary rules of evidence (Sinaga, Silubun, & Rado, 2024). In the United States, this doctrine has been recognized in various Supreme Court decisions, such as in *Mapp v. Ohio* (1961), which affirmed that evidence obtained

through an unauthorized search cannot be used in court. The application of this rule is rooted in the Fourth Amendment to the United States Constitution, which protects individuals from unreasonable searches and seizures (Ilyas, 2021). Thus, the Anglo-Saxon legal system emphasizes that protecting individual rights takes precedence over simply obtaining evidence to prove the defendant's guilt.

On the other hand, the Civil Law system, widely practiced in European countries such as Germany and France, has a more flexible approach to applying exclusionary rules. Countries with this legal system do not always reject evidence obtained illegally but consider the balance between procedural and substantive fairness (Ahmad, 2023). In Germany, for example, courts can assess whether evidence obtained through unlawful means can still be used based on the public interest and the principle of proportionality. This demonstrates that the Civil Law system does not have completely rigid rules for applying exclusionary rules but rather relies more on the judge's discretion in assessing the relevance and impact of the evidence on the judicial process. This comparison illustrates that the application of exclusionary rules is highly dependent on a country's legal philosophy. In Indonesia, although the principles of fair trial and protection of the defendant's rights are recognized, the Criminal Procedure Code (KUHAP) does not explicitly regulate the mechanism for exclusionary rules. As a result, this legal vacuum has the potential to allow the use of illegal evidence in criminal proceedings, particularly in narcotics cases.

The differences in approach between the Anglo-Saxon and Civil Law legal systems demonstrate that the application of exclusionary rules depends on the legal philosophy adopted by each country. Countries that emphasize the protection of individual rights tend to apply these rules strictly, while countries that prioritize a balance between procedural and substantive justice are more flexible in their application. Despite these differences in approach, the basic principle of exclusionary rules remains the same: to ensure that the judicial process is conducted fairly and to prevent law enforcement officials from engaging in violations in obtaining evidence.

The application of exclusionary rules of evidence in a country's legal system not only reflects a commitment to the principle of justice but also determines the extent of legal protection provided to defendants in the criminal justice process (Susatyo, 2023). With a mechanism that prohibits the use of evidence obtained unlawfully, the justice system can enforce the law without sacrificing the principle of fair trial and the protection of human rights as guaranteed by Articles 28D and 28G of the 1945 Constitution. The differences in the application of these rules across various legal systems provide insight that regulations regarding exclusionary rules in Indonesia must consider the balance between the effectiveness of law enforcement and the protection of the defendant's rights, so that the criminal justice process can run fairly and justly.

METHOD

This research method uses a normative juridical method, namely a legal research approach that relies on an analysis of applicable legal norms. This method is used to examine the regulation of exclusionary rules of evidence in the Indonesian legal system, particularly in the context of proving narcotics crimes. The approaches used in this study include a statistical approach and a conceptual approach. The statutory approach is carried out by examining various regulations related to criminal procedure law in Indonesia, including the Criminal Procedure Code (KUHAP), the Narcotics Law, and other relevant laws and regulations. Meanwhile, the conceptual approach is used to understand and describe the concept of exclusionary rules of evidence, both in legal theory and in judicial practice. The data sources used in this study are secondary data obtained through library research. This secondary data includes laws and regulations, legal doctrines developed by experts, and court decisions

relevant to the issues studied. The data analysis technique used was a normative-qualitative analysis, in which the collected data were systematically analyzed to illustrate the legal gaps in the application of exclusionary rules of evidence in narcotics cases in Indonesia. With this method, this research is expected to contribute to the reform of criminal procedural law in Indonesia to better align it with the principles of due process of law and human rights protection.

RESULTS AND DISCUSSION

Regulation of Exclusionary Rules of Evidence in Indonesian Criminal Procedure Law

The evidentiary system in Indonesian criminal procedure is strictly regulated in the Criminal Procedure Code (KUHAP), which regulates the types and validity of evidence that can be used in trials. Article 184 paragraph (1) of the Criminal Procedure Code stipulates that valid evidence consists of five types: witness testimony, expert testimony, letters, clues, and the defendant's testimony (Hanafi & Pamuji, 2019). This provision emphasizes that only evidence explicitly stated in the law can be used as the basis for proving a criminal case. Furthermore, Article 183 of the Criminal Procedure Code states that a judge may not sentence a defendant unless they have a conviction based on at least two valid pieces of evidence (Loway, 2022). This rule demonstrates that the evidentiary system in Indonesia follows the negative-wettelijk principle, which combines an evidentiary system based on law and the judge's conviction (Raihana et al., 2023).

Regulations regarding the validity of evidence also address evidence obtained illegally, although this is not explicitly stated in the Criminal Procedure Code (KUHAP). Several provisions of the KUHAP stipulate that procedures for obtaining evidence to ensure its validity in the judicial process are in place. For example, Article 32 of the KUHAP states that searches must be conducted with written permission from the Chief Justice of the District Court, except in urgent circumstances. Furthermore, Article 38 of the KUHAP emphasizes that seizures may only be carried out with a seizure warrant or permission from the Chief Justice of the District Court (Sinaga H., 2024). These provisions demonstrate that Indonesian criminal procedure law recognizes the importance of legal procedures in obtaining evidence, although it does not explicitly state that violating these procedures will render the evidence invalid and unusable in court.

In addition to the KUHAP, several other laws and regulations relate to the concept of exclusionary rules of evidence, although they do not explicitly address this. Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), for example, in Article 5 paragraph (1) recognizes electronic information and/or electronic documents as valid legal evidence. However, in practice, electronic evidence obtained through illegal means, such as hacking or illegal wiretapping, is often questioned in court. Similarly, Law Number 35 of 2009 concerning Narcotics grants investigators special authority to conduct wiretapping in narcotics cases but does not explicitly state whether evidence obtained through illegal wiretapping should be excluded from the evidentiary process (Hutagaol, 2019).

In several cases, judges in Indonesia have considered the validity of evidence obtained through unlawful means, despite the absence of explicit provisions in the Criminal Procedure Code regarding exclusionary rules of evidence. One notable example is Constitutional Court decision Number 20/PUU-XIV/2016, which stated that wiretapping must be conducted in accordance with legal provisions and must not violate a person's right to privacy. This ruling reinforces the principle that evidence obtained through illegal wiretapping can be challenged in court, even though the Criminal Procedure Code (KUHAP) does not explicitly regulate this.

Furthermore, several Supreme Court decisions have considered that evidence obtained illegally can be excluded by a judge. For example, in Supreme Court Decision Number 153

K/PID/2012, the judge rejected evidence obtained through a search conducted without court permission. The considerations in this decision demonstrate that, although there are no explicit provisions regarding exclusionary rules of evidence, judges can exercise their discretion to assess the validity of evidence based on the principles of justice and due process of law.

Another relevant decision is Constitutional Court Decision Number 65/PUU-VIII/2010, which emphasizes that searches and seizures must be conducted in accordance with the procedures stipulated in the Criminal Procedure Code. In this decision, the Constitutional Court emphasized that the act of confiscation without court permission is contrary to the principle of protecting human rights guaranteed in the 1945 Constitution. This decision provides a basis for judges in assessing the validity or otherwise of evidence obtained in a manner that does not comply with legal procedures. In judicial practice, courts often use the principles of proportionality and relevance to determine whether illegally obtained evidence can be used in a trial. In some cases, even if evidence was obtained illegally, judges may still consider it if it has high probative value and is crucial to a case. However, in other cases, particularly those involving human rights violations, judges are more inclined to reject evidence obtained through unlawful means.

The application of judges' considerations to illegally obtained evidence demonstrates a trend toward recognizing the principle of exclusionary rules of evidence in Indonesian judicial practice. Although there is no explicit provision in the Criminal Procedure Code (KUHAP) governing this, several court decisions have indicated that evidence obtained through unlawful means can be questioned. This approach reflects an effort to balance the interests of law enforcement with the protection of human rights in the Indonesian criminal justice system.

Legal Loopholes in the Application of Exclusionary Rules of Evidence in Narcotics Crimes

Narcotics cases have unique evidentiary characteristics because they often involve more invasive investigative procedures than other crimes. In many cases, the evidence presented in narcotics cases comes from seizures, searches, and wiretaps conducted by law enforcement officials. This practice is based on the rationale that illicit drug trafficking often involves organized networks and is difficult to uncover using conventional investigative methods alone. Therefore, evidence in narcotics cases often relies on methods that can raise debates about their legality, particularly when the evidence is obtained in a manner that violates the fundamental rights of the suspect or defendant.

Seizures and wiretaps in narcotics cases are often a source of controversy because, in practice, they do not always comply with applicable legal procedures. Although Law Number 35 of 2009 concerning Narcotics authorizes law enforcement officials to carry out these actions, not all seizures or wiretaps are carried out with prior court approval. Under certain circumstances, authorities take such actions under the pretext of urgency or in the interest of drug eradication, which can ultimately lead to potential violations of the rights of suspects or defendants. Without a clear legal mechanism regarding the consequences of illegal seizures or wiretapping, courts may face a dilemma in determining whether evidence obtained through these means should be admitted or excluded in court.

One of the main weaknesses in the regulation of evidence in narcotics cases in Indonesia is the lack of clear norms regarding the exclusion of illegally obtained evidence. The Criminal Procedure Code (KUHAP) does not explicitly regulate whether evidence obtained through unlawful methods can be used in court or must be excluded. The Narcotics Law also does not provide specific provisions regarding the mechanism for testing the validity of evidence in this context. As a result, judges are often forced to use subjective

judgment in determining whether evidence obtained through illegal means can still be used in court.

The lack of clarity in regulations regarding exclusionary rules of evidence in narcotics cases has the potential to lead to human rights violations. In the criminal justice system, the principle of due process of law requires that every action taken by law enforcement officials comply with applicable regulations and must not arbitrarily violate individual rights. Without clear rules regarding the exclusion of illegal evidence, defendants in drug cases may face the risk of being convicted based on evidence obtained through methods that violate legal procedures. This contradicts the principle of a fair trial, which states that every individual has the right to a transparent legal process free from abuse of authority.

The absence of clear regulations regarding the application of exclusionary rules in drug cases creates legal uncertainty in the case resolution process. In some cases, judges may consider illegally obtained evidence as part of their legal deliberations, while in others, judges may decide to disregard such evidence. This lack of uniformity creates problems with the consistency of court decisions, thus creating uncertainty in the legal system. Without clear legal standards regarding the treatment of illegally obtained evidence, it will be difficult for law enforcement, lawyers, and the public to predict how a case will be decided.

Furthermore, the legal vacuum surrounding the application of exclusionary rules in narcotics cases risks abuse of authority by law enforcement officials. Without firm legal sanctions against the use of evidence obtained through unlawful means, officials may be encouraged to engage in investigative practices that violate applicable legal principles. For example, unauthorized searches or illegal wiretapping can be conducted without clear legal consequences, as long as the evidence obtained remains admissible in court. This has the potential to encourage arbitrary actions that not only harm individual rights but also undermine the integrity of the criminal justice system as a whole.

The absence of explicit rules regarding the exclusion of illegal evidence in narcotics cases can also impact the effectiveness of law enforcement itself. On the one hand, legal ambiguity can provide loopholes for defendants to object to evidence used in trials, which can delay the judicial process. On the other hand, without clear rules, law enforcement officials may also lack guidance regarding the limitations they must adhere to in obtaining evidence. Consequently, there is an imbalance between the interests of eradicating narcotics crime and protecting human rights, which should be a primary consideration in every law enforcement process.

The importance of clearer regulations regarding exclusionary rules of evidence in narcotics cases relates not only to legal certainty but also to the protection of individual rights in the criminal justice process. Strict regulations will provide clearer guidelines for judges in determining the validity of evidence and prevent investigative practices that conflict with legal principles. Thus, the criminal justice system can function more fairly and transparently, maintaining a balance between crime eradication and respect for human rights.

The legal gap in the application of exclusionary rules of evidence to drug crimes in Indonesia poses a serious risk of violating the rights of defendants and the principle of fair trial. Currently, the Criminal Procedure Code (KUHAP) does not explicitly regulate the mechanism for rejecting evidence obtained unlawfully, allowing law enforcement officials to use illegal evidence without clear sanctions. This is particularly likely in drug cases, which often involve wiretapping, searches, and seizures, which involve complex and sensitive procedures. This legal gap creates uncertainty for judges in assessing the validity of evidence and opens up opportunities for abuse of authority.

Therefore, it is crucial for policymakers and legislators to draft regulations that expressly adopt the exclusionary rules principle, so that any evidence obtained unlawfully is automatically inadmissible in court. These regulations must be accompanied by operational

guidelines for law enforcement officials, including procedural limitations on searches, seizures, and wiretapping, as well as strict internal oversight mechanisms to ensure compliance with valid legal procedures. Legal reform efforts to address this gap must be undertaken through concrete steps, both at the legislative and judicial levels. First, a revision of the Criminal Procedure Code (KUHAP) or the creation of implementing regulations that explicitly regulate the application of exclusionary rules is necessary, including a clear definition of illegal evidence and its legal consequences. Second, training and outreach to law enforcement officials, including investigators, prosecutors, and judges, must be conducted to ensure a consistent understanding of this principle and its application in narcotics cases. Third, an independent oversight system, for example, through the Ombudsman or the Internal Police Oversight Commission, needs to be strengthened to assess officers' compliance with legal procedures and impose strict sanctions for violations.

Furthermore, courts need to develop jurisprudential guidelines that can serve as a reference in assessing the validity of evidence, so that judges have a clear basis for rejecting illegal evidence. With these steps, the application of exclusionary rules will become not only a theoretical principle but also a practical practice in narcotics criminal law enforcement, thus maintaining a balance between the effectiveness of drug eradication and the protection of human rights.

CONCLUSION

This study concludes that the application of exclusionary rules of evidence in the process of proving narcotics crimes in Indonesia still faces a significant legal gap. Although the principle of the validity of evidence is regulated in the Criminal Procedure Code (KUHAP), there are no explicit provisions governing the legal consequences of evidence obtained illegally. This creates legal uncertainty in the application of exclusionary rules, particularly in narcotics cases, where evidence often relies on investigative methods that potentially violate human rights, such as wiretapping and unauthorized searches. The absence of clear regulations not only creates inconsistencies in court decisions but also opens up opportunities for law enforcement officials to conduct investigations that deviate from the principles of due process of law and fair trial. Consequently, there is a risk that individuals may be convicted based on evidence obtained through unlawful means, which violates the principle of justice in the criminal justice system.

To address this problem, concrete steps are needed in the form of amendments or additions to regulations in the Criminal Procedure Code that explicitly regulate exclusionary rules of evidence. Clear rules regarding the exclusion of illegally obtained evidence must be incorporated into the national legal system to provide legal certainty for law enforcement officials and judges in handling narcotics cases. Furthermore, efforts are needed to improve the understanding of judges and law enforcement officials regarding the urgency of implementing exclusionary rules, both through training and judicial guidelines, so that the principles of due process of law and fair trial can be truly implemented in practice. Standardization of procedures for the use of evidence in narcotics cases also needs to be tightened to prevent abuse of authority during the investigation and prosecution process. With clearer regulations and increased capacity of law enforcement officials in understanding and implementing these rules, it is hoped that the criminal justice system in Indonesia will better uphold the principles of justice and legal certainty, while remaining effective in combating narcotics crimes.

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