

## Tinjauan Konsep Hakim Komisaris pada RKUHAP dalam Sistem Peradilan Pidana di Indonesia = Review of the Concept of the Judge Commissioner on the Draft Criminal Procedure Code in the Criminal Justice System in Indonesia

Raden Mas Bagus Trisardono Risandyo, author

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### Abstrak

Tindakan upaya paksa yang dilakukan ketika tahap pemeriksaan perkara seringkali disertai dengan kesewenang-wenangan yang mengakibatkan terjadinya pelanggaran HAM. Saat ini upaya hukum yang dapat diajukan oleh pihak yang dirugikan adalah melalui lembaga Praperadilan yang dinilai tidak berjalan secara optimal. RKUHAP mengatur ketentuan terkait lembaga yang berwenang mengawasi jalannya acara pemeriksaan yang diserahkan kepada Hakim Komisaris. Luasnya wewenang yang dimiliki Hakim Komisaris dirasa akan lebih menjamin perlindungan HAM pada tersangka/terdakwa. Namun penggantian lembaga Praperadilan dengan Hakim Komisaris tidak semata akan berjalan sesuai dengan yang diharapkan. Penelitian ini bermaksud menelaah tiga hal; pertama, pengaturan Hakim Komisaris pada RKUHAP; kedua, peran Hakim Komisaris pada RKUHAP khususnya terkait HAM tersangka/terdakwa; dan ketiga, kendala-kendala yang dapat terjadi dari penerapan Hakim Komisaris. Jenis penelitian ini ialah penelitian yuridis normatif dengan pendekatan konseptual dan perundang-undangan. Jenis data yang digunakan merupakan data sekunder yang didukung dengan data primer berupa wawancara yang diolah serta dianalisis secara deskriptif-kualitatif. Hasil penelitian menunjukkan bahwa; pertama, Pengaturan Hakim Komisaris sudah ada dan diatur sejak sebelum Indonesia Merdeka dan kemudian dimasukkan kembali pada RKUHAP 1974 hingga 2012; kedua, peran lembaga Hakim Komisaris khususnya terkait perlindungan HAM tersangka/terdakwa dianggap lebih ideal ketimbang Praperadilan karena Hakim Komisaris bersifat aktif dan memiliki wewenang yang lebih luas dan lengkap dalam tahap pra-ajudikasi sehingga berbeda dengan Praperadilan yang hanya bersifat pasif dan represif; dan ketiga, penerapan Hakim Komisaris akan mengalami beberapa kendala berupa kendala normatif (aturan-aturan), kendala kepentingan antar lembaga sistem peradilan pidana, serta kendala geografis yang dimiliki Indonesia.

.....Coercive measures taken during the case examination stage are often accompanied by arbitrariness which results in human rights violations. Currently, legal remedies that can be submitted by the aggrieved party are through pretrial institutions which are considered not running optimally. RKUHAP stipulates provisions related to the institution authorized to oversee the proceedings of the examination which is submitted to the Judge Commissioner. It is felt that the breadth of authority possessed by the Commissioner Judge will ensure the protection of human rights for the suspect/defendant. However, the replacement of the Pretrial Institution with the Commissioner Judge will not only run as expected. This research intends to examine three things; first, the setting of the Commissioner Judge in the RKUHAP; second, the role of the Commissioner Judge in the RKUHAP, especially regarding the human rights of the suspect/defendant; and third, the obstacles that can occur from the application of the Commissioner Judge. This type of research is a normative juridical research with a conceptual approach and legislation. The type of data used is secondary data which is supported by primary data in the form of interviews which are processed and analyzed descriptively-qualitatively. The results showed that; first, the arrangement of the Judge Commissioner has

existed and was regulated since before Indonesia's independence and was then re-introduced in the 1974 to 2012 RKUHAP; secondly, the role of the Judicial Commissioner, especially regarding the protection of the human rights of suspects/defendants, is considered more ideal than pretrial because the commissioner judge is active and has broader and complete authority in the pre-adjudication stage so that it is different from pretrial which is only passive and repressive; and third, the application of the Judge Commissioner will experience several obstacles in the form of normative constraints (rules), inter-institutional interests of the criminal justice system, as well as geographical constraints that Indonesia has.