

## **THE BASIC REGULATION OF JUDICIAL AUTHORITY IN ADJUDICATING CASES BASED ON CRIMINAL PROCEDURE CODE IN INDONESIA**

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### **ABSTRACT**

The basic regulation of the judges to adjudicate criminal cases as provided in the provisions of Article 1 to 9 of Criminal Procedure Code has a very wide and profound issue. The issue can be viewed primarily from a philosophical, theoretical, and juridical point of view. This study discusses the basis of judges to adjudicate criminal cases by examining the legislators' considerations of the provisions of Article 1 to 9 of Law No. 8 of 1981 concerning on the Law of Criminal Procedure (hereinafter referred to as KUHAP). The results of this research indicate that the consideration of the legislator of the basic arrangement of the judge authority to adjudicate cases only in matters and the manner stipulated in this law as stated in the Criminal Procedure Code is the affirmation of the principle of legality and restriction of judicial authority in the framework of the human rights protection.

**Keywords:** Basic Regulation, Judicial Authority, Criminal Case

### **1. INTRODUCTION**

#### **1.1 Background**

The basic regulation of the judicial authority in adjudicating cases is a set of legal rules concerning on the basis, procedure, and limits of the judge's authority to settle cases. The basic arrangement of the judicial authority in adjudicating in Indonesian criminal cases is stipulated in Law Number 8 of 1981 regarding Criminal Procedure Code (hereinafter referred to as KUHAP). Article 1 of the Criminal Procedure Code has included a judicial understanding that is a series of judicial actions to receive, examine, and decide criminal cases based on free, fair, and impartial principles in court in respect of and in accordance with the manner stipulated in this law.

Etymologically the word judgment comes from the basic word fair. The word fair is derived from Arabic that is 'adl ( اَدْل ) or 'aadilun ( اَدْلَان ) which means to be in the middle, honest, straight, and sincere . . The terminological sense in the judgment is to examine, weigh, and decide (the case, dispute), determine what is right (good) and what is wrong (evil). The example of its use in the sentence is a judge adjudicating a criminal case [1]. The word judge has in common with the *adjudicate* in English. Based on *Black's The Law Dictionary* then the *adjudicate's* definition is *to rule upon judicially* or to judge in a judicial manner [2].

The presence of Article to 9 of Criminal Procedure Code is a limitation that the basis of the jurisdiction of the judge shall only be based on the Criminal Procedure Code. In judicial practice, the judges adjudicate criminal cases frequently do not fully base themselves on the provisions of the Criminal Procedure Code because the judges often base themselves on other laws and even conduct the discovery of law in the form of interpretation or construction of the provisions of the Criminal Procedure Code. The judge's jurisdiction in adjudicating criminal cases not based on the Criminal Procedure Code always raises debate because there has not been a *communist opinion doctor* on the basis of the authority of such judges [3].

The basic regulation of the judicial authority in adjudicating criminal cases as provided in the provisions of Article 1 to 9 of Criminal Procedure Code has a very wide and profound issue. The issue can be viewed primarily from a philosophical, theoretical, and juridical point of view. Budiono Kusumohamidjojo [4] states that there is a descriptive distinction between legal philosophy, legal theory, and jurisprudence. Legal philosophy is a struggle to gain clarity and deep understanding of the law as an integral reality so that the question is critically reflective. Legal theory is a clear, systematic, and complete statement to explain the law as the order that governs human behavior to uphold order and approach justice so that its questions about the substance of the law are in terms of meaning and functional. Jurisprudence is the search for knowledge of all matters of the law in general so that the question is the operative dimension of law.

Philosophically, there are 3 (three) aspects of the problem that are from the ontological aspects regarding the nature of the judicial authority in adjudicating Criminal Procedure Code interpreted as legitimate power under the law. In a narrow sense, it is the law only. Anton Baker [5] views ontology as the most universal and comprehensive science that seeks to understand the whole reality. Its relation to science is the ontological basis of questioning about the nature of objects examined by the science.

From the epistemological aspect, it is regarding the method of judges adjudicating criminal cases in the Criminal Procedure Code interpreted as finding the formal truth only. Sudarminta [6] views epistemology as a branch of philosophy intending to examine the general and essential

features of human knowledge that are evaluative or judgmental, normative, and critical or questioning and test the knowledge of the ways and outcomes of knowing human activities which are divided into: metaphysical epistemology, skeptical epistemology, and critical epistemology

From the axiological aspect, it is concerning on the purpose or the benefit of the judges adjudicating criminal cases in the Criminal Procedure Code which is interpreted as enforcing the law within the framework of fulfilling is just procedural justice. In line with the view of Gustav Radbruch [7] on the ideals of law (*die idee des rechts*), it is a blend of certainty (*die gerechtigkeit*), usefulness (*die zweckmä ß igkeit*), and justice (*die rechtssicherheit*). Theoretically, the question is the basis of the judicial authority in adjudicating the Criminal Procedure Code to emphasize the theory of judges as a mouthpiece of the law only. The juridical issue is the presence of the norm which is not clear or blurred because Article 1 to 9 of Criminal Case Code (KUHAP) only determines to adjudicate is a series of judicial actions under the Criminal Procedure Code but it does not further explain its legal implications if the judge in adjudicate is not based on the Criminal Procedure Code. The other juridical issue is the presence of incomplete or only partial norms of an *incomplete norm or only partial set of complete norm*) because of the Criminal Procedure Code considered as a unification and codification the criminal procedure law in Indonesia has limited the basis of the jurisdiction of the judge in the matter of this law only. Whereas, the state constitution in Article 1 Paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) stipulates that the State of Indonesia is a state of law and in Article 24 paragraph (1) states that judicial power is an independent power to administer justice in order to realize law enforcement and justice, so that the basic arrangement of the judicial authority to adjudicate the casse should be in accordance with the philosophy and spirit of the constitutional provisions of that country. M.Yahya Harahap [8] argues both in terms of doctrine of jurisprudence, jurisprudential discipline, and judicial practice so law enforcement officers are given the authority to conduct *descretion* through the form of power of interpretation (*the power or the authority of interpretation*).

Within the scope of the authority of the judges to adjudicate criminal cases, such matters need to be investigated from the process of establishing Criminal Procedure Code (KUHAP) regarding the consideration of the Criminal Procedure Code (KUHAP) formers, so that the provision of Article 9 of the Criminal Procedure Code stipulates that the judge shall adjudicate criminal cases in matters and manners stipulated in the law. This writing is a legal research; therefore, the analysis is according to the method legal research based on legal issues in the research problems that are coherent and consistent according to systematic legal research. Peter Mahmud Marzuki [9] provides an example of legal research that is the research within the scope of the limits of

judges freedom by studying the views of legism and seeking views towards the view with reference to jurisprudence and understanding of philosophical theories and thoughts about the position of judges in the implementation of law

## **1.2 Research Problems**

What is the consideration of the Criminal Procedure Code (KUHAP) that the basis of the judicial authority shall be in the case and the manner stipulated in this law namely the Criminal Procedure Code as stipulated in Article 9 of the Criminal Procedure Code?

## **2. BASIC ARRANGEMENT OF JUDICIAL'S AUTHORITY IN ADJUDICATING CRIMINAL CASES IN CRIMINAL PROCEDURE CODE (KUHAP)**

### **2.1 Development of Criminal Procedure Law in Indonesia**

Criminal procedural law as a rule of law concerning procedure of criminal law enforcement of material and rule of law concerning authority of apparatus or official conducting criminal justice have long history in Indonesia. The Criminal Procedure Code as the current criminal procedure law cannot be separated from the criminal procedure law previously which is associated with the consideration of the legislators in formulating the Criminal Procedure Code.

Bambang Poernomo [10] believes criminal law of criminal procedure concerning wide scope. In the science of law, criminal event is often divided into legal science criminal procedural events that are various rules of law covering the procedure of criminal law and criminal procedural law that is all the rules of law that include system, burden, tools, the power of proof, and the means of science supporting evidence. Bambang Poernomo goes on to explain the views on classical and broad criminal law. The classical criminal procedure view considers criminal procedural law only as a pair of legal sanctions because criminal procedure code is a legal regulation that does not contain legal norms of order and prohibition. The broad view of criminal procedure code considers it to have its own norms even seen from the composition and substance of criminal procedure code that contains ambivalence structure in terms of human protection and multi-faceted in terms of authority of state equipment. This view carries the consequence that criminal procedure law as public law other than being domiciled as a criminal law may also be included as an administrative law if the pressure is placed on the regulation of authority.

The development of criminal procedure law in Indonesia has an important meaning to know its essence and existence in law life in Indonesia. The development of existing criminal procedure code in Indonesia will also provide a complete understanding that in terms of historical approach both the history of law and the history of the regulation indicates the presence of an intention that

the procedure of criminal law is in a book of law unification and codification mainly as an influence of the law formation in the moment of the Dutch East Indies colonial government.

Since its prevailing into 1848 the *Inlandsch Reglements / Staatsblaad Year 1848 Number 16* or *Herziene Inlandsch Reglement / Staatsblaad Year 1941 Number 44* or Revised Indonesia Regulation / RIB, hereinafter in call HIR) is a guideline and regulation on criminal procedural law in Indonesia that is relatively complete, hence it can apply in the long term. The influence of HIR in the establishment of the Criminal Procedure Code cannot be ignored. Understanding the whole Criminal Procedure Code (KUHAP) means that having to also understand the criminal procedural laws in the HIR. Important provisions in the HIR regulating the authority of judges and court system are still included in the draft of Criminal Procedure Code of 1979 in which the Government submits to the People's Legislative Assembly (hereinafter referred to as the People's Legislative Assembly) based on Presidential Mandate Number R.06 / PU / IX / 1979 dated 12 September 1979 regarding the Draft Law on Criminal Procedure Law (hereinafter referred to as the 1979 Criminal Draft Law).

Another important provision of a criminal procedural law applied almost simultaneously with the HIR is the *Reglement Op De Rechterlijke Organisatie 1848* on the Composition of Justice and Judicial Policies (hereinafter called RO). The provisions in RO are then changed during the independence of the State of Indonesia in conformity with the new judicial structure. The provisions in RO are then amended by some legal rules such as by the Emergency Law of the Republic of Indonesia Number 1 of 1951 Concerning Temporary Measures to Conduct Unity of the Structure of Power and Events of Civil Courts. The jurisdiction of the courts and judges in the RO is furthermore a source of the formation of the Criminal Procedure Code. The discussion on the establishment of Criminal Procedure Code (KUHAP) is something that is important because the analysis in it is used to know the formation consideration of Criminal Procedure Code (KUHAP) in formulating Article 1 to 9 of Criminal Procedure Code.

## **2.2 Development of Criminal Procedure Law in Indonesia**

### **2.2.1. Submission of Criminal Procedure Code Draft from the Government**

In 1967, the new Criminal Procedure Code had been drafted in place of the Criminal Procedure Code in the HIR with the establishment of the Internal Committee of the Department of Justice. In 1968, the Seminar of National Law II was held in Semarang with the theme of Criminal Procedure Law and Human Rights by National Legal Development Institute (LPHN). In 1973, the Internal Committee of the Ministry of Justice had made a draft of the Criminal Procedure Code which was jointly discussed by the Department of Justice, the Department of Security Defense including the Police and the Attorney General which was followed up by discussions

under the coordination of the Minister of Defense / Commander of the General Commander of Security and Order Restoration represented together with the Minister of Justice, Attorney General and Chief of Police.

In 1974, the draft of the Criminal Procedure Code by the Minister of Justice was delegated to the Cabinet Secretariat. In 1979, the draft of the Criminal Procedure Code which was discussed in the Cabinet Secretariat together with the Minister of Justice, the Attorney General, the Chief of Police, and the Deputy Supreme Court and on the input of several professional organizations namely the Indonesian Judge Association (Ikahi), Indonesian Prosecutor Union (*Persatuan Jaksa Indonesia*) Association of Indonesian Advocates (*Peradin*), and Association of Indonesian Law Degree (*Persahi*) [11].

In 1979, the draft of the Criminal Procedure Code was completed and subsequently by the Government submitted to the House of Representatives (hereinafter referred to as the People's Legislative Assembly) based on the 1979 Criminal Code Draft. The contents of the President's mandate in essence the government has submitted the draft of Criminal Code of 1979 to be discussed in the session of Parliament [12].

### **2.2.2. Discussion on Draft of Criminal Procedure Code in Parliament**

Discussion on the draft of Criminal Procedure Code is through the existing stages. The stages are: the Minister of Justice conveyed the government's statement in the Plenary Session of Parliament on the 1979 Criminal Code Draft, the general view of the members of the House of Representatives of the 1979 Criminal Code, the government's response to the general view of members of the House, the formation of the Joint Commission and the Synchronization Team to discuss the draft of the Criminal Procedure Code 1979, House of Representative s (DPR) plenary meeting on September 23, 1981, the final opinion of the House of Representatives on the draft of Criminal Code 1979, a speech of the government on the approval of the House of Representatives Law towards 1979, House of Representatives Decision No. 3 / DPR-RI / I / 1981-1982 About the 1979 Criminal Code, the Chairman of the People's Legislative Assembly letter Number B1.07 / KD / 2704 / DPR-RI / 981 dated 23 September 1981 to the President of the Republic of Indonesia, and on December 31, 1981, the Draft Law on Criminal Procedure was ratified by the President as Law Number 8 of 1981 on Criminal Procedure Law (State Gazette of the Republic of Indonesia Year 1981 of 76 and Supplement to State Gazette of the Republic of Indonesia of 3209) [12].

The debates raised in the establishment of the Criminal Procedure Code are mainly related to the articles concerning on the authority of law enforcement officers, the procedure of law, and most importantly the protection of the law towards human rights. The process of establishing a



Criminal Procedure Code (KUHAP) which is phased in is an effort to establish a Criminal Procedure Code in accordance with the values and ideals of the nation in the renewal of criminal procedure law as the embodiment of human rights in the field of law.

Regardless of the weaknesses of the Criminal Procedure Code as guidance in the field, the Criminal Procedure Code is intended as a modern procedural law in accordance with the existing global value of human rights. Compromise made by various parties, especially between the government represented by the Department of Justice with the legislature which at that time consisted of the Fraction of United Development, Fraction of *Golongan Karya*, Fraction of Indonesian Democratic Party, and fraction of Indonesian Armed Forces of the Republic of Indonesia has done to produce the Criminal Procedure Code (KUHAP) as known today.

### **2.3. Basis of Judicial Authority in Adjudicating Criminal Procedure Code**

To know the considerations of the legislators in formulating or defining some provisions in the Criminal Procedure Code, absolutely, it should be investigated starting from the process of forming the Criminal Procedure Code (KUHAP). As To know it fully, examining the process of forming Criminal Procedure Code (KUHAP) is done. There are three main points on which the Criminal Procedure Code is based on the basic regulation of the jurisdiction of the judicial authorities; the first is the legality principle in the Criminal Procedure Code; the second is the limitation of the judicial authority in adjudicating Criminal Procedure Code; and the third is the protection of human rights in the Criminal Procedure Code. These three are the most important discussions in the House of Representatives (DPR).

#### **2.3.1. Legality Principle in Criminal Procedure Code**

The 1979 Criminal Code Draft was originally intended to repeal and replace *Het Herziene Inlandsch Reglement (Staatsblad Year 1941 Number 44)* linked to Law Number 1 Drt.1951 (State Gazette Year 1951 Number 9, Supplement to the State Gazette Number 81) and all its implementing regulations. The draft of the 1979 Criminal Code is a draft that emphasizes the integration of procedures and restrictions on the authority of law enforcement officials in order to enforce the material criminal law.

Initially, in the draft of Criminal Procedure Code 1979, the recall section contains Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution, Law Number 13 of 1961 Concerning Basic Provisions of the State Police, Law Number 15 of 1961 about Provisions Principal of the Attorney of the Republic of Indonesia, and Law Number 14 of 1970 Concerning the Basic Provisions of Judicial Power. In further developments on the grounds of the amendment possibility, Law Number 13 of 1961 concerning Basic Provisions of the State Police and Law Number 15 of 1961 concerning the Central Provisions of the Prosecutor of the Republic

of Indonesia shall be omitted from the recall section. The remaining in the recall section are Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution and Law Number 14 of 1970 on the Basic Provisions of Judicial Power. The consequence is that there shall be a rule of law restricting the basis of the authority of the judge to adjudicate in accordance with the nature of the Criminal Procedure Code to implement the Criminal Law of Material in Indonesia, namely the Criminal Code or *Wetboek van Strafrecht* or *WvS* which is still enforced under Law No. 1 of 1946 Jo.Law Number 73 of 1958.

Based on the stages of the Criminal Procedure Code establishment, it is seen that the Criminal Procedure Code (KUHAP) formers are willing to make the Criminal Procedure Code as a criminal procedure law which clearly and explicitly determines the authority of the law enforcement officers in handling criminal cases in order to protect human rights. The principle of legality although not explicitly included but the forming of Criminal Procedure Code (KUHAP) is actually legality in the sense that the authority of law enforcement in criminal law enforcement procedures must be in accordance with the provisions of Criminal Procedure Code (KUHAP).

The authority of the judge to adjudicate criminal cases is directed only in matters and manners stipulated in the Criminal Procedure Code as a consequence of the existing legality principle. Based on the discussion in the House of Representatives, the Criminal Procedure Code is the elaboration of the Law on the Principles of Judicial Power but there is consensus from the formator of the Criminal Procedure Code to include new provisions in the draft Law on Criminal Code of 1979 which limits the authority of the judges to adjudicate criminal cases in order to establish the basic rules of authority to adjudicate more criminal cases strictly considering the judiciary's authority is more free and more independent than the authority of other law enforcement officers, the police and prosecutors. In addition, the existing legality principle is also intended to maintain the balance between the state and the individual with the emphasis of human rights in the Criminal Procedure Code.

### **2.3.2 Judicial Authority Restriction in Adjudicating Criminal Procedure Code**

Andi Sofyan and Abd. Asis explain that when reading all the formulas of the articles in the Criminal Procedure Code, then there is no formulation of the articles that provide the possibility or allow people to give meaning or other interpretation to the words that have been used by the legislator in the formulation of the articles [3]. People in a broad sense mean that everyone also includes a judge who has the authority to adjudicate a criminal case. The restriction is also in line with the intent and the purpose of the Criminal Procedure Code (KUHAP) formulation which expects to be a criminal procedure law which clearly and explicitly regulates the authority of the law enforcement apparatus.



The discussion on the objective of the Criminal Procedure Code establishment would certainly return at the time of deliberation of the 1979 Criminal Code Draft, which at the time of its deliberation defended the Law on the Basic Provisions of Judicial Power in the recall section. However, the Criminal Procedure Code (KUHAP) has also realized that there is a difference in understanding the basic scope of the judge's authority to adjudicate between the Criminal Procedure Code (KUHAP) and the Law on Basic Provisions of Judicial Power in order to add Article 1 to 9 of Criminal Procedure Code which was not previously in the 1979 Criminal Code Draft.

Article 1 to 9 of the Criminal Procedure Code in which there is a sense of adjudication intended to determine the limits of the authority to adjudicate by the judge in terms and means set forth in this law. It makes the legal procedure in the Criminal Procedure Code very strict because it limits the authority of judges to adjudicate criminal cases which are only under the Criminal Procedure Code.

Based on the history of the Criminal Procedure Code establishment, in general, the provisions of the Criminal Procedure Code strengthen the role of judges in the enforcement of criminal law material as well as to limit the role of judges according to the authority in the Criminal Procedure Code. The formal legality principle in the Criminal Procedure Code becomes the limitation for the authority of judges to adjudicate. The role of the judge is significant because it determines the settlement of criminal cases from the process of receiving, examining, and adjudicating which ends with the existing decision but is restricted in terms of procedures Martiman Prodjohamidjojo [13] considers the jurisdiction of judges in relation to the competence of existing cases. In the criminal case, the absolute competence is under the general court, while the relative *competence* is under Article 84 Paragraph (1) of the Criminal Procedure Code, namely the court of all matters concerning criminal acts committed within its jurisdiction.

The establishment of the Criminal Procedure Code is intended to conduct justice by regulating rights and obligations in criminal proceedings. In addition, the limitation of the judge authority of is also an elaboration of the principle of legality which is intended in the framework of the individual rights protection which results in restrictions on the authority of judges in adjudicating criminal cases.

### **2.3.3. Protection of Human Rights in the Criminal Procedure Code**

Ideas to replace the HIR as a legacy law of the Dutch Colonial Government in addition to being political and legal are also intended to follow developments in human rights regulation. Since the establishment of the Internal Committee of the Ministry of Justice in 1967 in the framework of drafting a new Criminal Procedural Code and with the holding of the Seminar on National Law

II in Semarang with the theme of Criminal Procedure Law and Human Rights by the National Legal Development Institution (LPHN), the emphasis of criminal procedure law more providing protection to human rights has emerged as a thought based on the 1945 Constitution and the Universal Declaration of Human Rights 1948.

The most important concept of human rights protection is taken from the doctrine of *equal protection*. The doctrine of protection equality in the law then becomes the concept of *equality before the law*.

This concept is regulated in the 1945 Constitution namely Article 27 paragraph (1) of the 1945 Constitution that all citizens simultaneously position in the law and government. Munir Fuady and Sylvia Laura L.Fuady [14] argues: The concept of non-discrimination is a concept that emphasizes the similarity of common treatment between citizens without distinction of race, tribe, descent, gender, religion, and other irrational things, the concept of *equal protection* is a concept that emphasizes legal protection to groups or group members discrimination, and the concept of *equality before the law* is a concept that emphasizes equality of treatment and position among individual citizens.

In the discussion of Criminal Procedure Code Draft, there is a significant change concerning Chapter I of General Provisions of Article 1 between the Criminal Procedure Code of 1979 with Chapter I of General Provisions of Article 1 of the Criminal Procedure Code, especially regarding the presence of provisions on adjudication in the Criminal Procedure Code. Legal considerations of the Criminal Procedure Code (KUHAP) formers are due to reinforce the principle of legality and restriction of judicial authority in the framework of the human rights protection. After the legalization of the Criminal Procedure Code, various understanding of the application of the provisions in it appears. From the implementation of the Criminal Procedure, various regulations and implementation guidelines have been issued in order to equate perceptions of law enforcement officers regarding to the provisions of the Criminal Procedure Code. The presence of various regulations and implementation guidelines is intended as part of the explanation and guidance in the implementation of the Criminal Procedure Code as well as guidance for law enforcement officers in its application in the existing cases. The existence of the regulations and guidelines of the Criminal Procedure Code which initially has complementary functions of the Criminal Procedure Code with the aim of uniformity in understanding and applying the Criminal Procedure Code has legally made the meaning of the Criminal Procedure Code as a criminal law code which is unification and codification cannot be maintained anymore.

One of the milestones of the presence of regulations and guidelines of implementing Criminal Procedure Code (KUHAP) is that it relates to the protection of human rights in criminal justice

process. Those rights that should not be excluded are based on the rule of law, especially those under the law and not the legal product of the judge's decision to adjudicate concrete cases. In fact, there is also a rule of law under the Criminal Procedure Code which gives new authority beyond what has been provided by the Criminal Procedure Code. In addition, court decisions frequently form new norms on criminal procedural law.

#### **2.4. Rules of Adjudication in the Criminal Procedure Code**

The provisions of Article 1 to 9 of the Criminal Procedure Code are the central point in writing on the basic regulation of the judicial authority in adjudicating cases because this article has actually animated the other provisions of the Criminal Procedure Code. The presence of Article 1 to 9 of Criminal Procedure Code which is often not realized is the article based on the principle of legality and restriction of judicial authority.

Luhut MP Pangaribuan's court view is an institution in which judicial power is exercised by a judge, so that judges and courts are one thing when performing their functions. The Criminal Procedure Code defines a judge as a state official whose existence is a trial of a criminal case. The Criminal Procedure Code also defines trial as a series of judicial actions. Luhut MP Pangaribuan agrees with Mauro Cappelletti's view that "*Judge has administrative responsibility for managing the cases, fixing dates for their hearing and resolution of the case*" [15].

Mohammad Taufik Makarao and Suhasril [16] explain that the Criminal Procedure Code frequently does not provide a provision for a procedure. The Criminal Procedure Code only provides definitions of some parts of the criminal procedure code. Based on the procedure of criminal procedure code, court officials including judges are bound by the procedural law which has been stipulated in the provisions of Criminal Procedure Code (KUHAP). It is a consequence of the principle of legality in the provisions of Criminal Procedure Code (KUHAP).

The Criminal Procedure Code does not mention any sanction towards the judge if there is a violation of criminal procedure code because the Criminal Procedure Code only regulates violation of the systematic decision in Criminal Procedure Code (KUHAP) with the threat of null and void if there are elements in the systematic decision not included in the decision. The guidelines for the implementation of the other Criminal Procedure Code does not specify any sanction if the provisions in the Criminal Procedure Code are not implemented or the provisions that determine whether or not the existing procedural breakthroughs may be permitted.

During the discussion of the Criminal Procedure Code (KUHAP) draft, one of the members of the House of Representatives specifically Abdullah Syahrir once expresses the final opinion of the Fraction of United Development in the House of Representatives Plenary Meeting on the 1979 Criminal Code Draft on September 23, 1981 regarding suggestions and expectations among

them that the judge is not merely as the only legal executive who only in charge of settling the case, but the position or function of the judge is more than that as the bearer of legal development duties with its jurisprudence. The role was also affirmed by Minister of Justice, Ali Said, when delivering the government's speech in the Plenary Session of Parliament on the 1979 Criminal Draft Law on 23 September 1981. Minister of Justice, Ali Said, conveyed that the 1979 Criminal Code Draft, in addition to functioning as a means to improve the order of law enforcement officials in accordance with their functions, duties, and authorities as guardian of human dignity and also the further elaboration of the recognition of human rights.

The firm distinction between judicial power and other powers such as prosecutors and the police within the framework of law enforcement has developed from the beginning. One of the members of the House of Representatives, Agus Djamil, at the time of expressing the final opinion of the Indonesian Armed Forces (ABRI) fraction in the House of Representatives plenary meeting on the 1979 Criminal Code Draft on 23 September 1981 has declared the draft of Criminal Code 1979 does not include Police and Attorney Law Act because there are those who argue that both are included in the Considerations, considering on the Criminal Procedure Code, absolutely it will be the implementation of the Police Act and the Attorney Law. In contrast to the Law on Basic Provisions of Judicial Power which from the outset is agreed upon its elaboration will be formulated in the Criminal Procedure Code.





Andi Hamzah as the Head of Revision Team of Criminal Procedure Code (KUHAP) considers the formulation and formation of Criminal Procedure Code (KUHAP) contains several weaknesses. One of them is the use of the word 'law' in the Criminal Procedure Code (KUHAP) is a mistake that must be corrected in the sense that it should be abolished because the Criminal Procedure Code is not the only referral of criminal proceedings. Andi Hamzah based his argument on the comparison of the only Dutch Criminal Procedure Law using the word "law" and China Criminal Procedure Code using the word of "law" and other relevant laws [17].

The view that needs the principle of legality and restriction of authority from law enforcers in criminal procedure law is also increasingly confirmed by the attitude of the government in Presidential Decree on Draft of Criminal Procedure Code (KUHAP) 2013 dated March 6, 2013 in Meeting with Commission III of House of Representatives (DPR). The Minister of Justice and Human Rights at that time, Amir Syamsudin, representing the President asserted in the new Criminal Procedure Draft of 2013 that there is a significant substance such as affirming the legality principle for the creation of legal certainty in the criminal procedure law [18].

## **2.5. Comparison of Article 1 to 9 of Criminal Procedure Code with Provisions of Other Countries**

The provisions in Article 1 to 9 of Criminal Procedure Code can be compared with the provisions in other countries. As for the comparison, it is the criminal procedure law in the Netherlands in the UK, and China. [19].

**Table 1: The caption must be followed by the table**

INDONESIA	DUTCH	ENGLAND	CHINA
			
The Legal System <i>Civil Law</i>	The Legal System <i>Civil Law</i>	The Legal System <i>Common Law</i>	The Legal System <i>Socialist Law</i>
<i>Kitab Undang-Undang Hukum Acara Pidana (Criminal Procedure Code)</i>	<i>Wetboek Van Straffordering</i>	<i>Criminal Procedure Rules</i>	<i>Criminal Procedure Code of People Republic of China</i>
Article 1 to 9: Adjudicating is a series of judge's actions to accept, check, and decide the criminal case based on free, honest, and fair principles in the court session in terms and according to the ways set by the law.	Article 1: <i>Straffvordering heft allen plaats op de wijze, bij de wet voorzien.</i>	Part 1.3: <i>The court must further the overriding objective in particular when: (a) exercising any power given to it by legislation (including these Rules); (b) applying any practice direction; or (c) interpreting any rule or practice direction.</i>	Article 3: <i>In conducting criminal proceedings, the People's Courts, the People's Procuratorates and the public security organs must strictly observe this law and any relevant stipulations of other laws.</i>
Basic regulation of judge's authority in adjudicating: these Laws.	Basic regulation of judge's authority in adjudicating: Laws.	Basic regulation of judge's authority in adjudicating: these laws and interpretation.	Basic regulation of judge's authority in adjudicating: these Laws and other relevant and related laws.

Based on the comparison, the provisions of Article 1 to 9 of Criminal Procedure Code seem to stand alone because of the presence of the word 'this law' only. Provisions of Article 1 to 9 of Criminal Procedure Code (KUHAP) at a glance has the power in legal certainty, however, it also has a weakness when faced with the development of community law and the complexity of the case that requires the judge's wisdom.

**2.6. Consideration of the Criminal Procedure Code**

Consideration of the establishment of Criminal Procedure Code (KUHAP) from the provision of Article 1 to 9 of Criminal Procedure Code is an affirmation of the principle of legality and

restriction of the authority of judges to adjudicate criminal cases. The provisions of Article 1 to 9 of Criminal Procedure Code arise from the consideration of the formers of the Criminal Procedure Code which requires the Criminal Procedure Code to be implemented in accordance with the law in it as it is. As for its development, the provisions in Article 1 to 9 of the Criminal Procedure Code are not always executed because some implementing regulations of Criminal Procedure Code (KUHAP) and some judges adjudicating that sometimes deviate from the provisions in Criminal Procedure Code (KUHAP).

The consideration of the establishment of the Criminal Procedure Code of the provisions of Article 1 to 9 of Criminal Procedure Code is to describe criminal procedure law in legal dogmatic perspective based on positivistic epistemology and legalistic epistemology which must be a written legal code (*lex scripta*) in the form of formal law. The provisions in the Criminal Procedure Code which have stricter and more rigid arrangements where the basic arrangement of the judicial authority to adjudicate only in cases and the manner stipulated in this law is the Criminal Procedure Code and not according to other laws.

From this research, the consideration of the Criminal Procedure Code (KUHAP) formulation of the basic arrangement of the judge's authority to adjudicate criminal cases can be determined which are only based on the Criminal Procedure Code (KUHAP) based on legal cases and the problem formulation is the philosophical thought that the Criminal Procedure Code is based on a view which emphasizes the protection of individuals from the concept of human rights, so that the basis of the judge's authority to adjudicate should also be restricted in the Criminal Procedure Code and the presence of thought or consideration in theory that the Criminal Procedure Code is a guideline and procedure of criminal procedure code which emphasizes the authority of justice to implement procedures of Criminal Procedure Code is based on the purpose of procedural justice enforcement. Therefore, the consideration of the Criminal Procedure Code (KUHAP) formator from the basic regulation of the jurisdiction authority to adjudicate criminal cases which must be based on the provisions of the Criminal Procedure Code is the affirmation of the principle of legality and restriction of judicial authority in the framework of the human rights protection.

### **3. CLOSING**

#### **3.1. Conclusion**

From the aforementioned writing, it is concluded that the consideration of the legislator from the basic arrangement of the judicial authority to adjudicate a criminal case in Indonesia which must be based on the provisions of the Criminal Procedure Code is an affirmation of the principle of legality and restriction of judicial authority in the framework of human rights protection.



### **3.2. Suggestion**

The legislators in formulating the new Criminal Procedure Code should pay more attention on the formality and material aspects especially in the framework of formation through the formulation of rules that are more responsive to the legal values and sense of community justice. It is expected that with the new Criminal Procedure Code, judges in understanding the basis of the jurisdiction will have good views and convictions that adjudicating criminal cases have wide dimensions within the framework of justice enforcement.

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