# Rechter Commisaris: A Dull Sword or A Medicine to Justice?

**Reynaldo Arya**
Reynaldo.arya@student.president.ac.id
Student of law study program, President University

**Abstract**

*In order to protect the fundamental rights of a human being from any violations during the process of investigation or trial proceedings, an institution called praperadilan was established through Indonesia Criminal Procedural Law. However, throughout 38 years of this institution implementation in Indonesia, the flaw and weakness of this institution has been identified. The example of weakness themselves posed as a great danger to the human rights of the suspect of accused, as on conducting coercive measures, the law enforcement may conduct the measures not in accordance with the law. This weakness has soon lead the society to thought of an alternative towards this institution, another institution that is better and may solve the weakness posed by praperadilan. The society then turn back to the history, realizing that prior to the implementation of Herziene Indische Reglement (HIR) in 1941 has erase a similar institution with the same purpose as in praperadilan, this institution was commonly known as "Rechter Commisaris". In order to understand whether this reestablished institution may solve the weakness of praperadilan, the author decides to conducting a research on this topic through implementing normative legal method to procure the necessary materials. This writing will analyze the present status quo of praperadilan through understanding the changes made by Constitutional Court to this institution and identifying the weakness of praperadilan that still relevant in 2019. Then, this writing will further analyze the reasons behind the disappearance of this institution in HIR and Law Number 8 Year 1981 regarding Criminal Procedural Law. Finally, this writing will provide a comprehensive comparison and analysis on whether the present reestablished Rechter Commisaris that was contained within 2011 Draft of Criminal Procedural Law may lead to better protection of fundamental rights of a human being.*

**Keywords**: *praperadilan, Rechter Commisaris, criminal procedural law*

## Introduction

fundamental rights of a human being or so called human rights was stipulated in International Covenant on Civil and Political Rights (hereinafter referred as "ICCPR"). The proceedings of enacting the Indonesia Criminal Procedural Code has establish a mechanism to protect the fundamental rights of a human being, those law were very susceptible towards violation towards human rights, when a person is being detained their right of liberty was limited. Article 9 of ICCPR has guarantee that no person shall be arbitrarily be

deprived of their right to liberty. Imagine a member of your family, were being detained or deprived of their own liberty not in accordance with the law, they are being detained without any information as to the reason leading to their detention, only after they are brought to the Court itself that the reason was disclosed by the prosecutor. Without considering the context whether the reason disclosed by the prosecutor were true or not, this treatment were a violation against the human rights itself, because you are entitled to be told, on what reason you are being detained to. Further imagine that upon you are brought into the prison, you are beaten up and tortured for them to receive a desired testimony by the law enforcement. This is the reality that must be faced by Indonesia legal system, numerous abuse of authority by the legal enforcement exist, Cipulir Street Musician case as the example.

If you yourself cannot protect your own rights, that you can unlawfully be detained, beaten up and be brought before the Court, do you really possess a fundamental right of a human being?

Thus, the importance to protect your own rights are increasing ever so often, and to protect your own rights, the most effective way would be establishing a check and balance on the authority of the law enforcement especially in respect of procedural law, to ensure the law enforcement will not abuse their authority and will only act in accordance with their own authority. Dr. Adnan Buyung Nasution were in the same opinion, considering the principle of Habeas Corpus, he establish a concept to protect human rights against any violation coming from Criminal Procedural Law, these concept were realized in Indonesia as "Praperadilan".[10] The concept was very distinct from Habeas Corpus implementation in United States, Netherlands and Belgium. The concept of Praperadilan was implemented in Indonesia Criminal Procedural Law through Article XX Law Number 8 Year 1981, and this concept has exist until today, for 38 years it has stood strong without any form of amendments. Experts are on the consensus that praperadilan is not a concept without any flaw, and the flaw were not something that may be left alone. And therefore, experts introduced a concept that was similar with praperadilan, that was also based on Habeas Corpus, this concept is called as Commisary Judge or in dutch Rechter Commisaris. This Commisary Judge concept was not a new concept, the

[10] I Wayan Gede Rumega. "Hakim Komisaris Dan Miscarriage of Justice Dalam Sistem Peradilan Pidana." *Jurnal Penelitian Hukum De Jure* 19, no. 1 (2019): 53. https://doi.org/10.30641/dejure.2019.v19.53-68

Dutch has applied this concept to protect human rights in respect of facing the procedure of enforcing the law, but was revoked by Indonesian Government in the draft of Law Number 8 Year 1981. Yet, even after a third of a decade has passed, the idea of Commisary Judge has continuously presented in the past draft of Criminal Procedural Law, and recently, the draft in 2011.

This article will start first by identifying the concept of praperadilan in the status quo, while at the same time determining the changes made within 38 years of its existence. To determine the changes of praperadilan institution, the author will rely upon the negative legislatoir, the Constitutional Court judgements, whom has the authority to review any law to the Indonesia Constitution, if they deem a clause were not in accordance with the Indonesia Constitution, then what will remains of the clause is a history. Following the explanation of the prevailing concept of praperadilan, the author will turn directly towards the problem that possess significance in the protection of human rights. After able to comprehend the present implementation of praperadilan, the author will brought the attention of the reader to the historical context of Rechter Commisaris. Remembering that it was not an entirely new idea, we must understand why these concept fail to be implemented in our past legal system, and instead the government prefer to implement praperadilan in Indonesia. The author will brought the context of Rechter Commisaris in 2 main era, 1941 where Herziene Indische Reglement (HIR) were implemented in Indonesia without any concept of Habeas Corpus, 1974 where exist numerous controversy in respect of reimplement Rechter Commisaris idea in the Draft of Criminal Procedural Law. We will then compare the new idea of Rechter Commisaris in 2019 to the concept of Rechter Commisaris in the past relevants concept. Finally, the author will present comprehensive analysis on the new authority whom resides in the 2011 Draft of Criminal Procedural Law, and determine whether it is realistic to apply and whether it is able to tackle the problems faced by praperadilan.

**Praperadilan in the Status Quo**

The idea of praperadilan itself was the results of deep thought from Adnan Bayung Nasution, after the rejection by the public in respect of 1974 Draft of Criminal Procedural Law, the Judicial Minister, Mudjono held a conference with “Komite Pembela Pancasila dalam KUHAP” and

other civil opposition towards the draft itself.[11] Within this conference, the idea of praperadilan was presented, and the Judicial Minister was very entertained with the idea, thus an entirely new Draft of Criminal Procedural Law, with praperadilan inside it was established. This draft has been Indonesia one and only Criminal Procedural Law for 38 years, it is Law Number 8 Year 1981.

This first part of this section will discuss the changes towards praperadilan in 38 years of its establishment, while the second part of this section will further emphasize the weakness of this institution.

The concept of praperadilan itself was crystalized within Article 77 until 83 of Law Number 8 Year 1981. As stipulated within Article 77, the institution of praperadilan has two main authority, (1) to determine whether the arrest, detention, termination of prosecution and termination of investigation were lawful, and (2) to determine compensation and rehabilitation for those who are unlawfully arrested and detained, or the discontinuance of the case investigation or prosecution were unlawful.[12] Yet, the authority contained within praperadilan was very limited, considering that the law enforcement were able to conduct coercive measure that was not regulated within praperadilan such as seizure, search and determining a suspect. Imagine you are being unlawfully seizured, searched and determined as a suspect, and were not able to protect you fundamental rights of a human being. Thankfully, Bachtiar Abdul Fatah, a staff in PT. Chevron Pacific Indonesia were able to understand the danger posed by the coercive measure that was not under the authority of praperadilan to determine, in 2014 he brought a judicial review to the Constitutional Court. Constitutional Court issued Judgement No. 21/PUU-XII/2014, that determines that Article 77 is inconstitutional so long in it applications, it does not interpreted to include seizure, search and determination of suspect as its authority. Hence, it is safe to say, through the decision of Constitutional Court, praperadilan were able to determine any coercive measure conducted by law enforcement.

One of the most controversial part of the praperadilan was Article 82 paragraph

[11] BPHN. "Naskah Akademik Rancangan Undang-undang Kitab Undang-undang Hukum Acara Pidana"Desember, 2010. https://www.bphn.go.id/data/documents/renkum_na2010.pdf

[12] Anang Sophan Tornado, "Praperadilan Sebagai Upaya Penegakan Prinsip Keadilan," *Al-Adl : Jurnal Hukum* 10, no. 2 (2018): p. 237, https://doi.org/10.31602/al-adl.v10i2.1366.

1, that stipulated the proceedings of praperadilan will be discontinued. Praperadilan must be finished within 7 (seven) days which was very short compared to normal court proceedings which can reach months before the judgments. Even though praperadilan by itself is already short, it can be shorten even further, so long as the Court start to adjudicate the claims before 7 days has elapsed. Understanding the risk posed, Drs. Rusli Sibua, the governor of Morotai has submitted a judicial review to the Constitutional Court. As the results of judicial review, they issued Constitutional Court Judgements No. 102/PUU-XIII/2015, and determine that even after the trial proceedings has started, the praperadilan will not be discontinued. Finally, there exist one last change on the system of praperadilan in these 38 years, in the Article 83 Paragraphs 2, it is stated that discontinuance of investigation or prosecution will allow prosecutor to appeal the praperadilan case into the High Court. This however, clearly does not represent the equal right before the court, as this only allows one party, in this case is the prosecutor to receive an legal efforts that is an appeal. Yet, does not allow the suspect to receive the same legal efforts. This concern was shared by the Constitutional Court Number 65/PUU-IX/2011, that determined that no legal efforts may only be given to one party, if this is such the case, then such article will be deemed inconstitutional. Therefore, the Constitutional Court implicitly recommending for the article in the future draft to either be completely erase the article, or to amend the article to allow not only the prosecutor to submit an appeal, but also allow suspect and their inheritors to submit an appeal. In the end, the Constitutional Court deems Article 83 Paragraph 2 as inconstitutional.

In late 2009, Law National Commission (Komisi Hukum Nasional) conducted a survey toward actors relevant in the praperadilan, the results of the survey was mindblowing, out of 363 respondent from 33 provinces, majority agree that the concept of praperadilan is the weak link point in our Criminal Procedural Law. The survey was differentiated into 4 (four) category, those who strongly agree, agree, disagree and strongly disagree that praperadilan was not able to uphold the justice intended by the concept of Habeas Corpus. 102 respondent were strongly agree, 197 merely agree, 54 disagree and only 5 respondent strongly disagree that

praperadilan was not able to uphold human rights [13].

Furthermore, Law National Commission in its 2007 determines that there exist 4 (four) main weakness of praperadilan in Indonesia, in which those are:

1. Praperadilan was purely optional, bringing a praperadilan case will require the awareness of the suspect towards the existence of the institution itself. as previously stated within Article 79-81, commencing a praperadilan requires a request from the suspect, inheritors, advocates or prosecutor respectively (M. Muntaha, 2018). Without this "request", praperadilan will not be conducted. If we were to imagine how many people lack the education or exposure to the existence of praperadilan, they might be brought into the court unlawfully, without understanding that their rights are violated, and thus letting the unfair trial continue.
2. The right of suspect to submit a praperadilan will fall when the case has been brought before the Court. This is exactly what has been stated by Article 82 Paragraph 1 of Law Number 8 Year 1981, and this concern was shared by both the writers and Law National Commission. However, in 2019, remembering the existence of Constitutional Court Judgement No. 102/PUU-XIII/2015, it must be noted that this article has been revoked, and the praperadilan case will be continued regardless whether the court trial has started or not. However, the discussion within this point should move towards what happens when a praperadilan proceedings was given during a trial proceedings. Will the trial proceedings immediately be stopped? There is yet any certainty in respect to this results.
3. Not all of coercive measure are within praperadilan authority. In our present Criminal Procedural Law, the authority of praperadilan only extend to determine whether the arrest, detention, termination of prosecution and termination of investigation were lawful. Yet question will arise, does coercive measure are limited to what has been stated previously? The obvious answer is no, as previously confirmed in Constitutional Court Judgments No. 21/PUU-XII/2014, other forms of coercive measure, seizure, search and determination of suspect was included within the authority of praperadilan. However, the present coercive measure that may be determined by praperadilan is not

[13] Hukum Online. "Penelitian KHN: Praperadilan Mengandung Banyak Kelemahan." hukumonline.com. hukumonline.com - Berita, December 17, 2009. https://www.hukumonline.com/berita/baca/lt4b29bab9ef3a7/penelitian-khn-praperadilan-mengandung-banyak-kelemahan/.

enough considering the advancement of society and technology, with the example of the latest Draft of Criminal Procedural Law which consider tapping as a coercive measure. However, praperadilan does not possess the authority to determine this particular coercive measure, hence, in any case a unlawful tapping were being implanted into the suspect, can they protect their own fundamental rights of a human being?

4. The implementation of praperadilan whom are based on the concept of Habeas Corpus has failed to implement the values within Habeas Corpus. The result was the judge was not effective to oversee the coercive measure and authority performed by prosecutor and law enforcement.

However, these 4 (four) concern presented by Law National Commission are only a glimpse of the praperadilan weakness. The writer will add further weakness that was relevant in this paper which consist of:

5. Praperadilan judges were only acting as examining judge, and even under their authority as examining judges, they merely adjudicate the case in respect of administrative, but left out the material of the case. In which this completely contradict the purpose of praperadilan or Criminal Procedural Purpose at the very first place, that is to find material justice, not merely procedural justice. When the judges were only allowed to determine the administrative context of a case, what the judges allowed to do were a simple check list on the existence of the permission to conduct seizure, search, capture and other coercive measure. With this authority, it will not within their authority to determine whether the coercive measure was truly within a justful cause, or the treatment of suspect in the police were lawful. As what has been proclaimed by Cipunir Street Musicians, they are beaten until they are willing to give false testimony, mere administrative check will not able to seek for the truth behind this type of occasion. Whereas compared to other states, the implementation of Habeas Corpus concept, the judges also acting as investigating judges, where upon suspicion, the judge may act to investigate the suspect and the case as a whole.[14] This give more authority to the judges to determine whether the entire procedure of apprehending a suspect, before and during they are brought in the prison, are lawful.

[14] Salman Luthfan. "Praperadilan di Indonesia: Teori, Sejarah dan Prakteknya"(Jakarta: ICJR, 2014). http://icjr.or.id/data/wp-content/uploads/2014/02/Praperadilan-di-Indonesia.pdf

If the idea of Rechter Commisaris were to be implemented in Indonesia, it is necessary for this concept to tackle the problems presented by the praperadilan, as if it can't, exist no urgency to change Habeas Corpus implementation in Indonesia.

## Historical Context of Rechter Commisaris

The idea of Rechter Commisaris has exist and applied in Indonesia before Indonesia has proclaimed their independent. This concept was stipulated in Reglement op de Strafvoerdering, and was regulating Indonesia people through the period of Dutch colonialism. Rechter Commisaris possess the authority at the preliminary stage of a proceedings to supervise the implementation of coercive measure, leading the implementation of the coercive measure, and determining who has the authority to conduct a coercive measure in dispute between the police and prosecutor.[15] And yet, the only concept that allow the protection of human right will be soon abandoned. Upon the enactment of Herziene Indische Reglement (HIR), the idea of Rechter Commisaris were revoked by the Dutch government. During the period of HIR in Indonesia there exist no clause that supervise the implementation of any coercive measure. While countless coercive measure was applied in criminal proceedings, there exist countless unrecorded history of coercive measure that was unlawful in present day standard. Reasons underlying as to why the Dutch abandon the idea of Rechter Commisaris remain unknown, as Staatsblad No. 38 Year 1941, which consist of their consideration was nowhere to be located, whereas it appears that none of the modern scholar was truly interested in seeking the truth behind the abandonment. However, only Prof. Mardjono Reksodiputro gives several understanding related as to why HIR was implemented instead of Stravoerdering, he states that the government consideration includes political, historical, cultural and human resources aspects, but fail to elaborate further the reasoning.[16]

This section will be divided into 2 (two) categories,(1) rejection of Rechter Commisaris by the society on 1974 Draft of Criminal Procedural Law, and (2) the

[15] I Wayan Gede Rumega. "Hakim Komisaris Dan Miscarriage of Justice Dalam Sistem Peradilan Pidana." *Jurnal Penelitian Hukum De Jure* 19, no. 1 (2019): 53. https://doi.org/10.30641/dejure.2019.v19.53-68

[16] BPHN. "Hakim Komisaris dalam Sistem Peradilan di Indonesia"Oktober, 2011.

https://www.bphn.go.id/data/documents/pk-2011-2.pdf

current concept within 2011 Draft of Criminal Procedural Law.

At 1970s, the society regard HIR was outdated and cannot keep up with the advancement of the society itself, therefore, demanding HIR to be change or ammended. In response to this demand, Prof. Oemar Seno Adjie who was the 1966 - 1974 Judicial Minister lead the establishment of 1974 Draft of Criminal Procedural Law. Within this draft, Prof. Oemar reintroduce the concept of Rechter Commisaris to protect fundamental rights of a human being in the proceedings. The Rechter Commisaris concept he reintroduced possess the same characteristic as the Rechter Commisaris concept in Stravdoering with only minor to almost no changes. However, although Prof. Oemar was very determined to brought back this concept, upon the end of his period in 1974, the successor of Judicial Minister was not entertained with the idea. Upon the meeting between the new Judicial Minister and several legal scholar such as Dr. Adnan Buyung Nasution, the idea of praperadilan instead was being put into the Law Number 8 Year 1981.

The reasons underlying the implementation of praperadilan instead of Rechter Commisaris were slightly explained by Dr. Adnan Buyung Nasution in his journal "Praperadilan Vs Hakim Komisaris", where he express his deepest regret on how praperadilan was applied as he explain that the authority given to praperadilan institution were very limited and to some certain extent, neglect the concept of Habeas Corpus themselves. Following the establishment of the draft, public opinion whom presented by media, and non-governmental organization in respect of the draft can only be described as disastrous, they thought that the new draft are unable to protect the suspect and accused rights, and most of them even thought the HIR was better than 1974 Draft. However, it is very intriguing as the public opinion determines the protection of suspect was very lacking and power-centric, whereas HIR almost does not protect their rights at all.

Furtherly explained by him was, praperadilan was chosen due to the political condition that exist in New Order. New Order era was very repressive, hence, it is nearly impossible for a government that was very repressive to guarantee the full protection of human rights, and instead merely giving an imperfect institution to protect their rights just for the sake of performing the minimum amount of their obligations.

After 38 years of implementation of Law Number 8 Year 1981, the society deems that the law cannot keep up with the

progress of the society once again. Therefore, the idea to renew the criminal procedural law was being made, in 2011, Draft of Criminal Procedural Law has been finished and requires finalization in the House of Representatives. [17]Within this 2011 Draft, the concept of Praperadilan was revoked, as it is deemed that the idea were not able to protect fundamental rights of a human being in the present day, in exchange, exist Rechter Commisaris institution in the 2011 Draft. The experts are convinced that the weakness posed by praperadilan would be tackled by this reestablished idea.[18]

Within the reestablished idea of Rechter Commisaris, it has been defined as an official whom are given the authority to evaluate the procedure of investigation and trial proceedings, and other authorities set under the draft of procedural law. Andri Hamzah refuse to call this Rechter Commisaris concept to be the same with the old Rechter Commisaris, or there exist no difference from the past and current concept of Rechter Commisaris. Those new authorities presented by the draft were determining whether a case was worthy enough to be handed to the Court, determining the amount of compensation and rehabilitation coming from unlawful coercive measures. One particular special clauses that will has numerous interpretation would be Article 111 Paragraph (j), this clause stipulated that any violation of the suspect rights in the investigation phase would be within the authority of the Rechter Commisaris, the relevance of this clause would be discussed further in the next section.

In addition, in the latest draft, it is stated that every coercive measures conducted will require prior approval from the Rechter Commisaris themselves. The entire coercive measures without exception will require strict approval from Rechter Commisaris, this include arrest, detention, termination of prosecution, termination of investigation, and seizure.

**Comparing the reestablished idea of Rechter Commisaris and Praperadilan**

The naratives of Rechter Commisaris able to solve every problem left by praperadilan cannot be digested without any further thoughts, the political agenda to push Rechter Commisaris has steadily increasing. But as a citizen whose

[17] Fachrizal Afandi, "Perbandingan Praktik Praperadilan Dan Pembentukan Hakim Pemeriksa Pendahuluan Dalam Peradilan Pidana Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 28, no. 1 (2016): p. 93, https://doi.org/10.22146/jmh.15868.

[18] Mosgan Situmorang. "Kedudukan Hakim Komisaris Dalam RUU Hukum Acara Pidana." *Jurnal Penelitian Hukum De Jure* 18, no. 4 (October 2018): 433. https://doi.org/10.30641/dejure.2018.v18.433-444.

right is vulnerable to the change of the concept, we must think critically whether this Rechter Commisaris will actually be able to handle the problems left, or merely a pointless change that will hardly changes the present protection of suspect rights during criminal proceedings.

This section of the article will present the problems presented in the previous section, and then compare which concept will lead to a better results in the perspective of the common people. In addition, this section will also determine the new changes to the Rechter Commisaris concept, and it's implications towards the state and people.

First, comparing the implementation of Rechter Commisaris and praperadilan in respect of the problems presented by Law National Commision 2007 Reports, and still relevant in the present day:

1. Praperadilan was purely optional, ironically, this first problem presented were unable to be tackled. At the end of the day, even as stated within Article 111 Paragraph 2 of the Draft of Criminal Procedural Law, in order to begin the Rechter Commisaris proceedings, the requirements were exactly the same praperadilan. It requires a request from the suspect or accused, hence, the problem will remains the same. If the suspect was not aware towards the existence of this institution with the purpose of protecting fundamental human rights, then they too will not be saved by the system. In comparison, United States and Netherlands has applied their own concept of Habeas Corpus as an integral part of any trial proceedings, before the suspect proceed to the trial, completing the Habeas Corpus is a must.[19] Even when you only stole an apple, your arrest will be questioned by the Court, through this simple example the violations of human rights in respect of criminal proceedings will be minimized due to constant supervision from the Court. This is exactly what Indonesia should trying to achieve, however, it is understandable as to why Indonesia will not apply the Rechter Commisaris as a prequisite to the trial proceedings, and the answer are merely it is unrealistic. The further details as to why the first point was unrealisitc will be described in the following part.
2. The right of suspect to submit a praperadilan will fall when the case has been brought before the Court. Contrary to the first point, this second point was able to follow the progression of the law as contained

[19] Eric M. Freedman, "The Habeas Corpus Strand of Restraints on Government," *Making Habeas Work*, December 2018, pp. 40-44, https://doi.org/10.18574/nyu/9781479870974.003.0006.

within Constitutional Court Judgement No. 102/PUU-XIII/2015. It must be acknowledged, especially the draft does not show setbacks on the prevailing law, as Draft of Indonesia Penal Code implement provision which has been regarded as inconstutional by the Constitutional Court. In any case, the protection of the suspect will not be restricted to any limited amount of time, even when the Rechter Commisaris was investigating and the trial proceedings has started, the Rechter Commisaris will continue their investigation and giving out their judgments separately. However, the implications is yet to be given any further, the certainty in respect of what happen when a Rechter Commisaris judgments were given during a trial proceedings. Hence, the author clearly does not see any relevance to renew Habeas Corpus institution in this aspect.

3. Not all of coercive measure are within praperadilan authority. Fortunately, as proved in the previous points that Rechter Commisaris were not necessary in the present status quo, this point were able to stabilize the leaning of discussion. Although this Draft of Criminal Procedural Law has included the entirety of the Constitutional Court Judgements No. 21/PUU-XII/2014, we must not satisfy ourselves with the recognition of the latest authority, as previously mentioned, throughout the progression of the society, there will exist numerous coercive measures that does not fall within the authority of the Rechter Commisaris authority, especially if it is restrictively define into particular measures. In the Draft of Criminal Procedural Law, exist Article 111 Paragraph (j) that stipulated that any violation of the suspect rights in the investigation phase would be within the authority of the Rechter Commisaris. This article will be able to stand the future, an article whom will be the sources of countless jurisprudence to protect human rights. However, the threat still exist, it is certainly probable that this article may be interpreted in a way that not in accordance with it's purpose, the so called "rubber clause" term. This clause must be given heavy attention, because this will be the ace or downfall of protecting fundamental rights of a human being. Therefore, so long as the interpretation of the judges towards this clause were in accordance with it's nature and purpose, and minimizing the "rubber clause" interpretation, then Rechter Commisaris will definitely be a huge improvements towards Indonesia legal system.

4. In the Rechter Commisaris concept, the judge will be acting both as the examining judge and investigating judge. They will not merely sit and expect the entire evidences presented to them and expect the evidences will always be enough to present a judgement. Within this renewed concept of Rechter Commisaris, the judge were presented with the authority to examine any witness and evidences that were not presented before them. This will lead for the judges to understand the case, and able to determine the material justice, the truth behind the case, instead of seeking procedural justice that merely check listing administrative documents. And thus, achieving justice.

Finally, as mentioned above, the idea of Rechter Commisaris itself was to some certain extent unrealistic. We must acknowledge that several points of concern has been address by this renewed concept, however, the idea itself may not be implemented in Indonesia. It must be understood that in the renewed concept of Rechter Commisaris, there is a requirements for this judge to be a judge who is separated from all of their duties as a District Court judges. Thus, they may only determine Habeas Corpus related cases. This is to be refrained upon, as even in our present status quo, the number of judges all across Indonesia was very lacking, we only possess roughly 7000 judges, and lack 4000 more judges to be regarded as ideal.[20] If we were to separate more judges from their responsibility in District Court, then the number would even be more dispar. In addition, as stated within the Draft of the Criminal Procedural Law, to be a Rechter Commisaris judge, you must held an experience over 35 years in the field of law. This requirements, is equal to the requirements for Supreme Court judges. This example shows you the main problem that lies within implementation of Rechter Commisaris.

In addition, in respect of realism, when the judges are given the mandate to be a Rechter Commisaris judge, then they too will possess special capabilities to determine not merely procedural justice but also material justice. Can the placement of only a single Rechter Commisaris judge in a single area will be enough to handle cases coming from their respective area? To give more insight to this cases, the author will present to you the number of praperadilan cases that happen in Surabaya, Jakarta Selatan, Bandung and Medan. Respectively, 50 cases, 160 cases, 36 cases and 110 in 2019 alone. The author deems that through the number above, although the implementation of Rechter Commisaris may brought positive outcome on protecting

[20] CNN. "Mahkamah Agung: Indonesia Kekurangan 4.000 Hakim." nasional, July 19, 2018. https://www.cnnindonesia.com/nasional/20180719065206-12-315260/mahkamah-agung-indonesia-kekurangan-4000-hakim.

fundamental rights of a human being, it is very controversial as to whether it is realistic to implement a judge without other responsibilities to adjudicate other matters in District Court considering the amount of judges in Indonesia themselves were very far from ideal. Numerous voices were heard from the polices regarding it would not be possible for a judge to determine this many cases within a single year, the author however would like to reiterate that a District Court judges will adjudicate the same amount of case or even higher. Hence it is not the main problem, the main problem lies within the separating Rechter Commisaris judge from other authorities within District Court judges.

**Conclusion**

Therefore, in conclusion, the author deems that Rechter Commisaris may be able to brought positive outcome to the present status quo, however, the changes that Rechter Commisaris themselves has brought was very limited, and in fact the present Draft of Criminal Procedural Law has failed to keep up with the progress of law in Indonesia through Constitutional Court as the guide. In addition, Rechter Commisaris was realistically hard to implement in Indonesia due to its lack of judge.

# REFERENCES


Afandi, Fachrizal. "Perbandingan Praktik Praperadilan Dan Pembentukan Hakim Pemeriksa Pendahuluan Dalam Peradilan Pidana Indonesia." Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada 28, no. 1 (2016): 93. https://doi.org/10.22146/jmh.15868.

BPHN. "Naskah Akademik Rancangan Undang-undang Kitab Undang-undang Hukum Acara Pidana" Desember, 2010.

https://www.bphn.go.id/data/documents/renkum_na2010.pdf

BPHN. "Hakim Komisaris dalam Sistem Peradilan di Indonesia"Oktober, 2011.

https://www.bphn.go.id/data/documents/pk-2011-2.pdf

CNN. "Mahkamah Agung: Indonesia Kekurangan 4.000 Hakim." nasional, July 19, 2018. https://www.cnnindonesia.com/nasional/20180719065206-12-315260/mahkamah-agung-indonesia-kekurangan-4000-hakim.

Freedman, Eric M. "The Habeas Corpus Strand of Restraints on Government." Making Habeas Work, 2018, 40–44. https://doi.org/10.18574/nyu/9781479870974.003.0006.

Hukum Online. "Penelitian KHN: Praperadilan Mengandung Banyak Kelemahan." hukumonline.com. hukumonline.com - Berita, December 17, 2009. https://www.hukumonline.com/berita/baca/lt4b29bab9ef3a7/penelitian-khn-praperadilan-mengandung-banyak-kelemahan/.

Luthan. Salman. "Praperadilan di Indonesia: Teori, Sejarah dan Prakteknya"(Jakarta: ICJR, 2014).

http://icjr.or.id/data/wp-content/uploads/2014/02/Praperadilan-di-Indonesia.pdf

Muntaha, M. "Kedudukan Pra Peradilan Dalam Sistem Hukum Pidana Di Indonesia." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 29, no. 3 (December 2018): 461. https://doi.org/10.22146/jmh.22318.

Rumega, I Wayan Gede. "Hakim Komisaris Dan Miscarriage of Justice Dalam Sistem Peradilan Pidana." *Jurnal Penelitian Hukum De Jure* 19, no. 1 (2019): 53. https://doi.org/10.30641/dejure.2019.v19.53-68.

Situmorang, Mosgan. “Kedudukan Hakim Komisaris Dalam RUU Hukum Acara Pidana.” *Jurnal Penelitian Hukum De Jure* 18, no. 4 (October 2018): 433. https://doi.org/10.30641/dejure.2018.v18.433-444.

Tornado, Anang Sophan.“Praperadilan Sebagai Upaya Penegakan Prinsip Keadilan,” *Al-Adl : Jurnal Hukum* 10, no. 2 (2018): p. 237. https://doi.org/10.31602/al-adl.v10i2.1366.