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Optimization of Autopsy Functions in Evidence Criminal Act

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ABSTRACT--This paper aims to find out and analyze optimizing the function of outopsis as evidence in criminal acts. Outopsis is an internal and external examination of the body to determine the cause of death of a human being. Death will cause permanent disruption to the central nervous system, cardiovascular system and respiratory system. If one system is interrupted, it will affect other systems. Outoptions can be done thoroughly on the whole body or only limited to one organ or one specific body area. In some cases of unnatural deaths, an outopsis is the only way to find out the cause of death. But apparently not all the process of outoption can run smoothly, because many people, especially the victims' families do not want that done. Many people assume that the process of outoption is useless because it cannot revive dead victims, and some even think that internal organs are examined, so there will be organs taken. Even though autopsy can be known and proven the exact cause of death, mechanism of death and time of death. An autopsy basically has no risk and can even provide new information related to a person's medical history in his lifetime. Therefore, the function of outoption needs to be optimized in order to obtain complete information on the causes of an unnatural death and in the end the results of this outoption can be evidence of a criminal offense.

Keywords: optimization, autopsy function, evidence, criminal acts

I. INTRODUCTION

Various literatures reveal that the Proof is needed to prove whether or not the defendant committed the act that was charged to him. Proof is also a central point of examination of cases in court hearings, because in the evidence there are many interests that must be considered by the judge. Judges need to pay attention to the interests or rights of victims, defendants and the public. The victim has an interest in or has the right to get justice and concern from the state for the suffering he experienced because of the evil deeds of others. The community has an interest in securing security and peace with criminal offenses, while the perpetrators of criminal acts have an interest in getting a fair sentence according to their mistakes. Besides that proving means convincing the judge of the truth of the arguments or arguments presented in a dispute, and proof is only needed in the trial process in court alone. Juridically, the meaning of proving is to provide a sufficient basis for the judge in examining a case, to gain confidence about the truth of a legal event.

Associated with incidents of violation of the law against the body and human lives, then in order to prove and reveal the cause of death of a person, law enforcement officials need help from experts in the relevant fields. Disclosure of the cause of death of a human being is carried out by a doctor through a way of examining outops (Visum et repertum). Outoptions are useful in cases related to homicides which sometimes cannot be disclosed without an outopsy performed on the victim's body.

Some cases of death that is not fair, such as the case of the death of the Bernas daily journalist named Udin, reminded about the importance of the role of doctors to conduct an examination of the outopsy in uncovering the murder. Then the case of the death of David Hartanto Widjaja, a student of Nanyang Technological University, Singapore, who died in the campus court. David fell from the fourth floor in one of the campus buildings. Singapore police report states David committed suicide due to depression. Shortly after, the Singapore police chose to close the case. However, the analysis of Indonesian forensic doctors is different, namely that the wound on David's body is not only from the blunt force collision due to falling, but also due to the existence of sharp weapon wounds. Likewise, the case of the death of Wayan Mirna Salihin, who was allegedly poisoned using cyanide by the defendant Jessica Kumala.[1]

Law Number 36 of 2009 concerning Health, especially section eighteen, governs the issue of post-mortem in Indonesia and Government Regulation No. 18 of 1981 concerning Clinical and Anatomical Corpse Surgery and Transplantation of Human Body Tools or Tissues.[2]

Outopsy examination conducted aims to find the cause of the disease and / or the presence of an injury, explain the cause of death and look for a causal relationship between the abnormalities found with the cause of death.[3]. Forensic autopsy or Visum et repertum is done if there is a request from the police in the form of a Request for Visum (SPV) to carry out internal and external examination. Visum et repertum can be used as one of the evidences, although the contents are in the form of expert statements which are given under oath and outside the court hearing. His visum et repertum qualifications are included as documentary evidence and not expert evidence.[4]. While the body of the victim himself is referred to as "evidence" which occupies a very important position in the evidence in addition to other evidence.

Carrying out a post-mortem surgery requires a family role, wherein the investigator is required to notify

the victim's family that the procedure must be carried out for the benefit of the court. This is as regulated in KUHAP article 134 paragraph 1 which regulates that in the case where it is absolutely necessary that for the purposes of proving post-mortem it is no longer possible to be avoided, the investigator must notify the victim's family in advance. If the family expresses objection that an outoption is carried out on the body of the victim, the investigator must explain clearly the details of the purpose and purpose of the surgery.[5] Therefore, if there is an attempt to obstruct, obstruct or thwart the examination of the corpse, then the act is threatened with criminal offenses as regulated in article 222 of the Criminal Code.[6] Investigators set a time of two days to wait for a response from the family of the corpse to be autopsy, as well as to search for the family of an unknown body. If within two days there was no response from the family or the family of the body was not found, the autopsy will continue to be carried out immediately in accordance with the request of the investigator.[7]

As has been explained above that to find out the cause of death in some cases of unnatural death the only way is an outopsy examination. But in reality, not all autopsy processes can run smoothly. The general public, especially on the part of the victim's family, does not want an outopsy to be carried out. The refusal of examining an outopsy coming from the victim's family is generally caused by their ignorance of the outops. Many think that an outopsy examination is considered useless because it cannot revive dead victims. In addition there are also those who argue that with internal body surgery, there are organs that will be taken.

The refusal to do an outoption examination by the victim's family if in general attention there are 3 reasons, namely fear of the existence of body surgery as if there were mutilation, respect for the human body and religious reasons. This last issue is not a simple matter. Indeed, there is hardly a religion that strictly prohibits the practice of adoption, especially in the interest of unmasking the crime. Based on this, outopsy examinations on death victims are usually carried out at the request of the investigator / police, rarely carried out at the request of the victim's family. Therefore, it is necessary to optimize the function of outopsis as evidence to reveal and seek material truth in a criminal act.

II. RESEARCH METHOD

This type of research is a normative research that is legal research which places the law as a norm system building. The norm system in question is about the principles, norms, rules of the laws and regulations, court decisions, agreements and doctrines.[8] The rule of law that occurs in these problems is law enforcement. The types of legal material reviewed consist of primary, secondary and tertiary legal materials to be processed, classified for later review. The approach used in this study is statutory and historical.

III. FINDINGS AND DISCUSSION

1. Forensic autopsy as evidence

Proof carried out in a judicial process, basically is an attempt to reconstruct or re-describe a legal event that has passed, in order to obtain the construction results of an actual event that occurred. Therefore, whether or not a reconstruction is completely or not depends entirely on the work of proof. In the case of reconstructing the event, evidence and methods of use are needed in accordance with the existing provisions concerning proof of something. On the basis of what is obtained from these activities, the construction of events that have passed has been formed which as much as possible exactly the actual events.[9]

The evidence in a trial is very decisive, because it will influence and underlie legal decisions taken by judges. Evidence is defined as anything that can be used to prove the truth of an event in court. In the trial before the judge sentences are always preceded by an examination of witnesses and evidence that is considered to be able to support the proceedings of the trial process especially in criminal cases. The evidence has the power to prove the court's ruling that the ruling is true so the suspect is found guilty. In settling criminal cases, a person is considered guilty if there is a decision of permanent legal force (in kracht van gewijsde). It is this strength of evidence that supports the judge's decision in court in deciding a case.

Article 184 Criminal Procedure Code paragraph 1 regulates legal evidence, namely: a. Witness testimony b. Expert expertise c. Letter d. Directions e. Defendant's statement. The strength of evidentiary evidence is based on the judge's observations to assess the compatibility between the facts that exist with the criminal acts charged and also the compatibility between each evidence with the facts and the criminal acts charged. From the words that there is agreement, it can be concluded that there must be at least two directions to obtain valid evidence. The strength of the evidence lies in the relationship of whether or not the act is considered as a guide to the actions charged to the defendant.[10]

Evidence is different from evidence, the Criminal Procedure Code does not clearly state what is meant by evidence. However, Article 39 paragraph (1) of the Criminal Procedure Code regulates what can be confiscated in connection with a criminal offense, namely: a. objects or claims of suspects or defendants, which are all or partly suspected to have been obtained from criminal acts or as a result of criminal acts; objects that have been used directly to commit a crime or to prepare it; c. objects used to obstruct criminal investigations; d. objects specifically made or intended to commit a crime; e. other objects that have a direct relationship with a criminal offense. In other words, objects that can be confiscated as mentioned in Article 39 paragraph (1) of the Criminal Procedure Code can be referred to as evidence.[11] The characteristics of objects that can become evidence: a. Is a material object; b. Speak for yourself, c. The most valuable means of proof

compared to other means of proof, d. Must be identified with witness statements and defendant statements. Furthermore, in Article 181 of the Criminal Procedure Code the panel of judges must show the defendant all the evidence and ask him if he recognizes the evidence.

Andi Hamzah said, the evidence in a criminal case is the evidence of the offense being carried out (the object of the offense) and the goods by which the offense was carried out (the instrument used to carry out the offense), including also the goods which are the result of an offense.[12] Based on Andi Hamzah's opinion above if there is a crime of murder, then the body of the victim is evidence (object offense) that meets the characteristics of the evidence as discussed previously. The corpse that becomes evidence through forensic outoptions or forensic surgery which is then poured in an expert statement in the form of visum et repertum becomes one of the useful evidence for law enforcement as regulated in Article 122 paragraph 1 of Law No. 36 of 2009 concerning Health. The implementation of the Forensic Autopsy must be carried out in accordance with the Minister of Health Circular No. 1342 / MENKES / SE / XII / 2001 concerning the Implementation of Forensic Autopsy.

2. Optimizing the autopsy function as evidence in criminal acts

Before discussing more about how to optimize the autopsy function, first discuss the meaning of optimization. According to the Big Indonesian Dictionary Optimization is derived from the optimal basic word which means the best, highest, most profitable, making the best, making the highest, optimizing the process, ways, optimizing (making the best, highest, etc.) so that optimization is an action, process, or methodology to make something (as a design, system, or decision) become more / fully perfect, functional, or more effective.[13] According to Winardi optimization is a measure that causes the achievement of goals or targets.[14] Based on the above understanding, it can be concluded that optimization is a process, carrying out programs that have been planned in a planned manner in order to achieve the goals / targets so as to improve performance optimally.

Indonesia, which adheres to the Civil Law System, places written laws or codifications as the main source of law used by judges in deciding cases. According to Ifrani in the application or enforcement of law, often the task of the judge is not just applying the law and in law enforcement practices for law enforcement officers (especially judges), the law is an interpretative concept, there is room for interpretation in the context of the selection, placement, and application of the law.

The task of the judge in the trial is not only to apply the law but with and the existence of interpretative concepts in the examination of criminal cases also represents the absolute power of the judge. Pangaribuan is of the opinion [15] that in general the concept of hearing a case in a criminal court is in the form of a non-adversary and adversary system. The Criminal Procedure Code (KUHAP) adheres to a non-adversary system, which in this concept embraces that state power through law enforcement has a central position to resolve criminal cases, therefore the power of judges in examining criminal cases in a court is absolute. Meanwhile, according to Hiariej[16], the Indonesian criminal justice system adheres to the negativity of wettelijkbewijs theorie, meaning that the basis of evidence according to the judge's conviction arises from the evidence in the law negatively. This can be concluded based on Article 183 of the Criminal Procedure Code which stipulates that "a judge may not convict a person unless, at least with two valid evidences, he obtains confidence that a crime has actually taken place and that the defendant is guilty of committing it".

Based on these two opinions, it can be concluded that the judge's authority is absolute in deciding criminal cases, as well as giving the judge full opportunity to use his subjective discretion in law enforcement. However, with the Indonesian criminal justice system which adheres to the negativity of wettelijkbewijstheorie the emergence of judges' confidence in deciding cases is limited by KUHAP Articles 183 and 184.

In connection with the forensic autopsy related to making a post mortem in accordance with the absolute power of the judge, then in the trial process, the judge has the power to order the public prosecutor to make a complete indictment. The public prosecutor can then ask the investigator to complete the minutes of the examination, as well as make a post mortem re-examination accompanied by instructions on the importance of performing a forensic post-mortem examination. In examining criminal cases, judges and public prosecutors are not authorized to request the making of visum et repertum directly at health service facilities, both hospitals and puskesmas. The authority to request for the making of the visum et repertum as stipulated in the Criminal Procedure Code, the Criminal Code, and Law Number 36 Year 2009 concerning Health only rests with the National Police investigating agency.

Then article 122 of Law No. 36 of 2009 Article 122, regulates that the government and regional governments are responsible for the availability of forensic post-mortem facilities in their territory. Therefore, in the implementation of forensic post-mortem surgery, it must not be done by a forensic doctor. Therefore, every doctor, both an expert doctor and a doctor who has not yet undertaken expertise, is authorized to carry out forensic post-mortem surgery in every health care facility. Then, in order to uncover the mystery of the cause of death in an event suspected of having an element of crime, the law guarantees legal protection for the parties involved in it, both doctors, the authority of the relevant agencies, as well as the necessary facilities and infrastructure.

Therefore, in order to optimize the function of forensic post-mortem surgery to assist law enforcement agencies in determining the defendant's mistakes, which are manifested in the quality of acts in the crime of murder, good collaboration between police investigators and doctors is supported by adequate infrastructure. Because the results of the autopsy corpse of the murder victim will have implications for criminal liability. However, there

are still inhibiting factors in the investigation process due to the lack of medical personnel and the community who do not understand the importance of examining the body. In addition, the facilities and facilities are minimal to do an autopsy, because not all hospitals have complete enough tools to do an autopsy, so often the implementation of an autopsy takes a long time.

IV. CONCLUSION

Autopsy corpses of victims of criminal acts are very effectively used to find material truth. This autopsy helps law enforcement officials to find out the causes of someone's death, especially for cases that are difficult to prove the truth. The implementation of the autopsy requires the help of a doctor at the request of the police investigator in accordance with Article 184 of the Criminal Procedure Code, to be used as legal evidence and is believed by the judge, to uncover and seek the material truth of a crime, so that it makes light of justice not only for the victim but also the suspect and also community in a crime. However, there are still inhibiting factors in the investigation process due to the lack of medical personnel and the community who do not understand the importance of examining the body. In addition, the facilities and facilities are minimal to do an autopsy, because not all hospitals have complete enough tools to do an autopsy, so often the implementation of an autopsy takes a long time.

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