

Homicide Cases Without Autopsies from the Perspective of Professionalism Indonesian Advocates (Case Study of the Ni Wayan Mirna Death)

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ABSTRACT

Professionalism for a profession is absolutely necessary with the aim of recognizing a job that is categorized as a profession. As a noble profession (*officium nobile*), the advocate profession must carry out its duties and responsibilities by prioritizing professionalism in order to make the best effort for clients. One of the best efforts that an advocate must make in resolving a criminal case is to continue to oversee the client's legal process at every level of examination in accordance with the provisions of the procedural law in the Indonesian criminal justice system. It becomes a separate problem when it comes to proving a murder case for which the exact cause of death of the victim is not known, which in its proof absolutely requires a forensic autopsy to determine the exact cause of death of the victim. Considering that the party with the most authority in declaring the cause of a person's death is a forensic doctor, the role of a professional advocate is crucial in ensuring the rights of the murderer to obtain evidence in the form of a forensic autopsy on the victim's death. The author raises the problem in this paper, namely how the professionalism of advocates in handling criminal cases of murder without autopsy in Indonesia. This research is normative research using a case approach.

Keywords: *Professionalism, Advocate, Indonesian Criminal Law, Homicide, Murder, Autopsy, Forensics.*

1. INTRODUCTION

In 2016, the Indonesian public was shocked by the murder case that killed a woman named Ni Wayan Mirna (26 years old), the daughter of a businessman named Darmawan Salihin. Jessica Kumala Wongso, who is the victim's female friend, is perpetrator of being the perpetrator of the murder [1].

Referring to the chronology contained in the Central Jakarta District Court decision Number 777/Pid.B/2016/PN.JKT.PST. the murder incident began when Jessica agreed to meet Mirna at Cafe Olivier, Grand Indonesia, Jakarta on January 6, 2016, at 18.30 WIB (Western Indonesian Time). Jessica came first, followed by Mirna along with her friend Hani. Prior to Mirna and Hani's arrival, Jessica ordered Vietnam Ice Coffee (VIC) which she knew was Mirna's favorite drink. Not long after Mirna drank VIC drink, she had experienced convulsions and foam came out of his mouth. Not long

after, Mirna was taken to the Abdi Waluyo Menteng Hospital, Central Jakarta, and was declared dead on January 11, 2016, at 18.30 WIB [2].

Based on the initial examination, the Metro Jaya Regional Police concluded that Mirna's death was an unnatural death because Cyanide (NaCl) was found in the victim's oral fluid and in the VIC drink she drank. He also found bleeding in the Mirna's stomach due to the presence of corrosive substances that damage the gastric mucosa. Against this initial conclusion, the police will further enhance the next legal process, namely investigation ("investigation" in the Indonesian criminal procedural law system, includes two stages called "penyelidikan" and "penyidikan").

The Central Jakarta District Court decision Number 777/Pid.B/2016/PN.JKT.PST., also explains that the Metro Jaya Regional Police Investigators will then take various steps to uncover the case, namely[2]:

- 1) Requesting information from a Toxicologist to explain the nature, compound reactions, and effects of Cyanide Poison (CN-);
- 2) Closed Circuit Television (CCTV) examination or requesting information from a Digital Forensic expert;
- 3) A psychological examination of the suspect, by asking for information from psychologists, clinical psychologists, and psychiatrists;
- 4) Requesting information from forensic medical experts; and
- 5) Requesting information from criminal experts and criminologists, in order to analyze them from the perspective of legal science and criminology.

However, of all the examination processes carried out at the investigation level to the level of the court hearing, the autopsy process on Mirna's corpse was not carried out.

An autopsy on Mirna's corpse was not carried out because the victim's family did not allow it [2]. The judge did not do an autopsy on the victim's body. The judge believed that with the evidence of cyanide in the stomach organ of Mirna, the reason for death could already be ascertained (that is, it was caused by cyanide poisoning) so to find out the cause of Mirna's death, an autopsy is not necessary. According to Otto Hasibuan, Jessica's legal advisor, the absence of an autopsy in Mirna's case has become a serious problem. An autopsy is important to reveal the cause of Mirna's death which is categorized as unnatural.

The discovery of cyanide poison in Mirna's organs of 0.2 mg/l cannot be the reason for the cause of death, because at this level it will not cause death to a person. In people who died from inhalation of cyanide, cyanide levels in lung, blood, and brain tissue were 0.75 mg/100g, 0.41 mg/100g, and 0.32 mg/100g, respectively [3]. Taking into account the facts of such a trial, then autopsies are crucial in revealing the reason/cause of the Mirna's death.

The author, on March 3, 2020, interviewed Otto Hasibuan as Jessica's legal advisor. Otto Hasibuan explained that in an effort to clearly reveal the cause of Mirna's death, he encouraged law enforcement to carry out an autopsy on Mirna's body. Otto's efforts are seen by the author as a manifestation of the implementation of the professionalism of advocates, who in carrying out their professional obligations are obliged to do their best effort for clients.

Taking into account the description of Mirna's death case above, the author formulates the problem of how to handle murder cases without an autopsy from the perspective of professionalism of Indonesian lawyers.

2. METHOD

This research is normative research aimed at finding and formulating legal arguments through an analysis of the subject matter using a case approach [4], namely the approach to the homicide case of Ni Wayan Mirna Salihin. The data sources used are primary data sources and secondary data sources. Primary data sources are obtained from direct interviews with primary sources, while secondary data sources are obtained from case documents, court decisions, and related research journals.

3. RESULT AND DISCUSSION

I. OVERVIEW OF AUTOPSIES AND THEIR RELATIONS IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

Autopsy comes from the Latin term "*autopsia*" which means post-mortem or examination of a person's body to find the cause of death [5]. The Indonesian Dictionary defines "autopsy" as "*pemeriksaan tubuh manusia yang tidak bernyawa melalui pembedahan untuk mengetahui penyebab kematian*" (a surgical examination of an inanimate human body to determine the cause of death) [6]. However, in medical terminology, the autopsy is an investigation or examination of a corpse's body, including the organs and their internal composition after surgery or injury, with the aim of knowing the cause of death of a person, both for the purposes of medical science and for the purposes of law enforcement as a revealing the mystery of a crime [7].

Based on its purpose, autopsies are divided into [8]:

- 1) Anatomical Autopsy, performed for the educational purposes of medical faculty students;
- 2) A clinical autopsy, is performed on the corpse of a person who is suspected to have been caused by an illness. The aim is to determine the exact cause of death, analyze the concordance between clinical diagnosis and postmortem diagnosis, disease pathogenesis, and so on. Clinical autopsies are carried out with the written consent of the heirs, there are times when the heirs themselves request it;
- 3) Forensic/Medicolegal Autopsies, are carried out on the corpse of a person who is suspected of having died due to an unnatural cause such as in cases of accidents, homicides, or suicide. This autopsy is

carried out at the request of the investigator in connection with the investigation of a case.

The purpose of a medicolegal autopsy is to [8]: first, ascertain the identity of an unknown or unclear person; second, determining the exact cause of death, the mechanism of death, and the time of death; third, collect and examine evidence to determine the identity of the object causing the crime and the perpetrators of the crime; and fourth, making an objective written report based on facts in the form of a *visum et repertum* (VeR).[9]

An autopsy (post-mortem) is carried out in the context of an investigation to find the cause of death as well as all information regarding things that happened to the victim around the time of death, for example, to determine whether the victim died in an accident, committed suicide, was abused or killed. So even if there is a suspicion of an overdose, certainty will only be obtained after an autopsy and toxicological examination (detecting the presence of poison or drugs in the body), and it must be determined whether the overdose occurred due to the victim's own actions or someone else did it [7].

Abdul Mun'im Idries gave the opinion that: "*Forensic post-mortem is solely for the sake of justice, not for other problems, such as insurance*" [10]. The clarity that can be revealed from forensic post-mortem is to find out the cause of death, the manner of death, whether homicide, suicide, or accident, or death due to disease. This effort is very much needed in the judicial process from the stage of an investigation, prosecution, to trial. Forensic analysis will assist in providing a probability of finding a particular piece of evidence on which to base the assumption on determining the perpetrator [11].

The crime that resulted in the death of the victim has the main evidence in the form of the victim's body itself. It is impossible for the body to be brought to trial at the time of the trial because with the passage of time the body will decompose, while usually the trial period for cases can only be carried out a few weeks or even months after the crime has occurred.

Unnatural deaths in terms of carrying out law enforcement functions are very necessary for an autopsy to be carried out. Unnatural deaths are deaths caused by homicide, suicide, and accidents such as injuries, traffic accidents, drowning, poisoning, and other violence [12]. It can be interpreted that unnatural death does not occur due to diseases of the normal aging process [13].

In the Indonesia Criminal Procedural Code (KUHAP) regarding autopsies, it can be seen in Article 133:

- (1) "*Dalam hal penyidik untuk kepentingan peradilan menangani seorang korban baik luka, keracunan ataupun mati yang diduga karena peristiwa yang merupakan tindak pidana, ia berwenang mengajukan permintaan keterangan ahli kepada ahli kedokteran kehakiman atau dokter dan atau ahli lainnya*" (In the event that an investigator for the benefit of the judiciary handles a victim, whether injured, poisoned, or dead, which is suspected to be due to an incident that constitutes a criminal act, he/she is authorized to submit a request for expert testimony to a judicial medical expert or a doctor and/or other experts).
- (2) "*Permintaan keterangan ahli sebagaimana dimaksud dalam ayat (1) dilakukan secara tertulis, yang dalam surat itu disebutkan dengan tegas untuk pemeriksaan luka atau pemeriksaan mayat dan atau pemeriksaan bedah mayat*" (The request for expert testimony as referred to in paragraph (1) shall be made in writing, which in the letter is explicitly stated for wound examination or post-mortem examination and or post-mortem examination).

The participation of the deceased's family is also taken into account in an autopsy effort, as stipulated in Article 134 of the Indonesia Criminal Procedural Code:

- (1) "*Dalam hal sangat diperlukan di mana untuk keperluan pembuktian bedah mayat tidak mungkin lagi dihindari, penyidik wajib memberitahukan terlebih dahulu kepada keluarga korban*" (In the event that it is urgently needed where for the purposes of proving a post-mortem is no longer possible to avoid, the investigator is obliged to notify the victim's family in advance).
- (2) "*Dalam hal keluarga keberatan, penyidik wajib menerangkan dengan sejelas-jelasnya tentang maksud dan tujuan perlu dilakukannya pembedahan tersebut*" (In the event that the family object, the investigator is obliged to explain as clearly as possible the purpose and objective of the need for such surgery).

The article, which stipulates the need for a post-mortem in order to prove, the investigator may notify the victim's family of the purpose of holding a forensic post-mortem. If the victim's family objected, the investigator must explain as clearly as possible the purpose of the surgery. If the investigator has explained the importance of having a post-mortem, but the family still insists on showing objections and ends up refusing to do a forensic post-

mortem, then by law a forensic post-mortem must still be carried out.

The existence of autopsy evidence is also important for judges to conduct examinations, to decide cases at trial. With forensic information from the authorities, judges can decide cases clearly and clearly with the support of legal evidence. This is as emphasized in Article 6 paragraph (2) of the Indonesia Law Number 48 Year 2009 concerning Judicial Power, which states that: "*Tidak seorang pun dapat dijatuhi pidana, kecuali apabila pengadilan karena alat pembuktian yang sah menurut Undang-Undang, mendapat keyakinan bahwa seseorang yang dianggap dapat bertanggung jawab, telah bersalah atas perbuatan yang didakwakan atas dirinya*" (No one can be sentenced to a crime, unless the court, because of the legal evidence according to the law, is convinced that someone who is considered to be responsible, has been guilty of the act he is accused of).

A forensic autopsy on the victim's body is the only solution to the above problem, where one of the objectives of a forensic autopsy is to obtain scientific evidence in the form of an objective written report based on facts in the form of *Visum et repertum* (VeR). VeR comes from the word "visual" which means to see, and the word "repertum" which means to report is a doctor's written report (made by remembering his oath of office/profession) based on an examination of a person or suspected person, based on a written request from the competent authority.

Even though the VeR is made in writing, its legal position is not as evidence of a letter (but as evidence of expert testimony), as stipulated in Article 120 of the Indonesia Criminal Procedural Code linked to Article 133 *juncto* explanation of Article 135 *juncto* Article 1 point 28. Information given by a judicial medical expert is called an "expert statement" (*keterangan ahli / deskundige verklaring*) while the information given by a doctor other than a judicial medical expert is called a "statement" (*keterangan / verklaring*) [14].

II. MIRNA CASE: PROFESSIONALISM OF ADVOCATE IN HANDLING HOMICIDE WITHOUT AUTOPSIES

"Professional" means people who are experts, so professionalism is something that is professional. The profession can be interpreted as a job that requires higher education for the perpetrators which is emphasized on mental work, not manual work [15]. The mental ability referred to here is the requirement for theoretical

knowledge as an instrument for carrying out practical actions [16].

Richard Hall describes five forms of professionalism, including [16]: first, dedication to the profession; second, social obligations; third, independence; fourth, confidence in the profession; and fifth, relationships with fellow professionals. Hall's opinion shows professionalism towards the profession in general. If it is devoted to advocates as a profession in Indonesia, then the professionalism is guided by the Indonesia Law Number 18 Year 2003 concerning Advocates, and the Code of Ethics for Indonesian Advocates (KEAI). The indicators for the professionalism of advocates include: first, the obligations of the advocate profession; second, the independence of the advocate profession; third, knowledge of the law; and fourth, maintaining ethics and morals. In connection with the case of Mirna's death due to cyanide poisoning which is seen as unnatural death, efforts should be made to scientifically disclose the cause of death, especially through an autopsy. Taking into account the description in the previous section regarding the importance of an autopsy in an effort to uncover a murder case, it is not wrong if the perpetrator's legal advisor (who in this case is Otto Hasibuan) actively asks for an autopsy to be carried out.

Otto Hasibuan is of the view that the cause of the death of Mirna's is not clear, because, with a cyanide level of 0.2 ml in the victim's stomach, it will not have an impact on the death of a person (lethal dose that can cause a person's death is at least 100 ml/l) [2]. Otto Hasibuan's opinion was also confirmed by several experts such as Budi Sampurna (Faculty of Medicine, University of Indonesia), Beng Beng Ong (pathology expert at Queensland Australia University), and Djaja Surya Atmadja (an expert in forensic pathology at the University of Indonesia) as presented in the trial [2]. Otto Hasibuan's efforts were not only carried out at the first level of case examination but also at the appeal level [17][14] and at the cassation level [18].

The author is of the view that what has been done by Otto Hasibuan as a legal advisor for the defendant/convicted Jessica is a form of professionalism in carrying out the duties and responsibilities of the advocate profession. The author's opinion is based on two reasons:

- 1) Consistency of Otto Hasibuan's attitude in encouraging an autopsy on Mirna's body;
- 2) Otto Hasibuan in an effort to resolve the case of the death of the victim is consistent and guided by the criminal law procedures that apply in Indonesia;
- 3) Otto Hasibuan's persistence in resolving cases has led to various legal remedies, from appeals to cassation, as stipulated in the Indonesia Criminal Procedural Code.

In the memorandum of appeal made by Otto Hasibuan, he explained that the cause of death of the victim could not

be determined because an autopsy was not performed. Otto Hasibuan categorizes *Judex facti* as not authorized and/or has exceeded his authority because he himself determines the cause of death of the victim without the opinion of a Pathologist.

The three reasons the author is able to more or less represent the form of one of the professional ethics of advocates (as stipulated in the KEAD) are carrying out the obligations of the advocate profession.[19] Quoting the opinion of John M. Memory, "*The duty of the lawyer to his client and his duty to the legal system are the same: To represent his client zealously within the boundaries of the law*" [20], the attitude and actions of Otto Hasibuan in the handling of the Mirna death case has illustrated the form of persistence in assisting the client (in this case the defendant, Jessica) within limits that are still in accordance with the procedural law regulations in force in Indonesia.

If the author refers to Cohen's opinion [20], then the attitude of courage and independence of Otto Hasibuan during handling the case of Mirna's death is also a picture of respect for the professional ethics of his advocate. Coupled with strong skills/knowledge of the law and law enforcement procedures, effective application of knowledge in decision making in court, ability to speak persuasively about very complex situations and subjects, ability to investigate events, trial advocacy skills, and ability to work under high pressure for a long time, can provide effective work results [20].

The attitude of lawyers (such as Otto Hasibuan) may be able to stigmatize the lawyer profession as an obstacle to police investigations so that it seems as if the rights of the accused are seen as blocking the path to achieving justice. Keep in mind that justice can be in the form of procedural justice and substantive justice. Procedural justice is concerned with fairness and assurance that proper legal procedures have been followed [21]. Therefore, Toby Miller explained that there is one way in which lawyers can be included in legal procedures because the police need togetherness with lawyers in solving a case by upholding the values of justice [21].

4. CONCLUSION

Autopsies are very necessary for unnatural deaths, in order to determine the cause of unnatural deaths. In Mirna's case, Otto Hasibuan (as Jessica's attorney) has tried to push for an autopsy on Mirna's body, so that the cause of Mirna's death can be revealed clearly, clearly and with certainty. Otto Hasibuan's various efforts in the Mirna case are an illustration that Otto has carried out his duties and responsibilities as an advocate professionally. All efforts are made to ensure that the facts revealed in the trial and believed to be related to the Jessica case can be optimally fought for. Otto Hasibuan's attitude and

actions can be learned that advocates in Indonesia must be able to optimize all efforts in accordance with applicable legal provisions to achieve justice for clients and the success of the advocate profession itself.

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