

Autopsy: Law And Culture In Indonesia

Handar Subhandi Bakhtiar, Andi Muhammad Sofyan, Muhadar, Slamet Sampurno Soewondo

Abstract: The autopsy is a step to prove a murder crime. In Indonesian law, an autopsy is regulated in a criminal code that stipulates that in the event of an unnatural death an autopsy must be conducted to determine the cause of death and as an attempt to prove a criminal act. On the other way, Indonesian society as a religious and cultured society is very high on religious and cultural values, so that sometimes in the process of conducting an autopsy it gets rejection from the family with reasons such as religion, culture and beliefs.

Keywords: Autopsy, Law, Culture, Indonesia.

1. INTRODUCTION

In the beginning of 2016 a case has occurred which is enough to attract public attention in Indonesia. The death of a woman at a cafe shortly after she drank coffee. Allegations of who the perpetrator pursued to the friend of the victim who ordered the drink, then the news about the alleged poisoning began circulating in the online media before the official inspection to ensure the cause of death of the victim was carried out. The trial of this case was widely broadcast on television. The public witnessed a dispute between the prosecuting prosecutor and the lawyer who defended his client. Each party calls witnesses including expert witnesses for their opinions. Expert witnesses in the fields of forensic and medicolegal medicine were presented, each expressing opinions based on their knowledge (Valianto, 2017) The study conducted by Siaw Carwen from Padjadjaran University in 2013 showed that quite a number of Indonesian people refused the autopsy. In this study, 79 percent of the respondents had heard the word autopsy. But, only 75 percent claimed to understand the meaning. What really can explain the autopsy is only 61 percent. With these figures, the government needs to continue to campaign for legal awareness and make people understand the principle of autopsy. If not, then there will be many criminal cases that should be carried out by the corpse surgery to find out the causes of death, cannot be proven with certainty through a series of corpses (Carwen, S. 2015). Based on the facts above, the Indonesian police sometimes experience difficulties in implementing law enforcement, especially related to murder cases that require the implementation of an autopsy to provide information about the causes of death victims and can also be used as evidence in the criminal justice process. For this reason, this paper will examine the legal arrangements regarding autopsy in Indonesia and how the cultural provisions of Indonesian society apply for autopsy for the benefit of the judiciary.

2. Autopsy in Indonesia Law

The criminal proof system in Indonesia is regulated in law 8/1981 concerning the Criminal Procedure Code (KUHAP). Related to proof is specifically regulated in article 183 of the Criminal Procedure Code. This article stipulates that:

The Judge may not impose a sentence on a person except if with at least 2 (two) valid means of evidence he has the conviction that a criminal act actually occurred and that the defendant is guilty of doing so.

In this article there are two conditions for imposing a criminal sentence on a person, namely: There are at least two valid evidences; and There is confidence in the Judge obtained based on the evidence. If there are two valid pieces of evidence, but the judge is not sure that the defendant is guilty of a crime, the judge will not punish the defendant. Likewise, on the contrary, the belief of a judge solely without the support of two valid evidences, cannot be the basis for punishing the accused. Of the two conditions, it is clear that the proof system adopted by the Criminal Procedure Code is a system of proof according to law to a certain extent (*negative wettelijk bewijsleer*). (Boyoh, 2015). The existence of evidence or better known as proof is a very urgent aspect of court proceedings so that there is certainty and law enforcement. Because the accuracy or accuracy of the evidentiary effort is the justice that wants to be realized and is very dependent on legal certainty. Accurate proof is the path to justice. But on the contrary, inaccurate proof will give birth to injustice and legal uncertainty. With proof, the judge will get a clear picture of the events that are being disputed in court (Boyoh, 2015). The main function of the criminal justice process is to seek the truth as far as human beings can and without sacrificing the rights of the suspect. The guilty will be found guilty and the innocent will be found not guilty (Idries, 2008) To disclose legally, is it true that a criminal act has taken place and what the real cause is and with what means the criminal act is carried out, concrete evidence is needed at the time of the occurrence of a criminal offense that can be justified legally. For investigating and investigating and resolving these legal issues at a further level until finally terminating the case in court, assistance from various experts in related fields is needed to make clear the course of events and the interrelationships between actions with each other in the series of events (Rindo, 2015). Based on Article 7 paragraph (1) letter (h) of the Criminal Procedure Code which states that: *Investigators have the authority to bring in experts who are needed in conjunction with case investigations.* Associated with the help of expert information needed in the process a criminal case, then this assistance is at the investigation stage as well has an important role to help investigators search and gather evidence in an effort to give the truth material of a criminal case (Rindo, 2015). To obtain the evidence needed to uncover a thing criminal offense, often the law enforcers are faced with a certain problems or things that cannot be solved alone because the problem is beyond its limits or his expertise. In such cases often the help of an expert is very

- Handar Subhandi Bakhtiar, Faculty Of Law, Hasanuddin University, Makassar, Indonesia. Corresponding Email: handar_subhandi@yahoo.com
- Andi Muhammad Sofyan, Faculty Of Law, Hasanuddin University, Makassar, Indonesia.
- Muhadar, Faculty Of Law, Hasanuddin University, Makassar, Indonesia.
- Slamet Sampurno Soewondo, Faculty Of Law, Hasanuddin University, Makassar, Indonesia.

needed to get material truth as complete as possible for those law enforcers. In the Criminal Procedure Code has formulated an understanding of expert information, as follows (Sofyan, 2013):

According to Article 1 number 28 of the Criminal Procedure Code, that expert's information is information given by someone who has expertise specifically about the things needed to make a lightcriminal cases for the purpose of examination.

According to Article 186 of the Criminal Procedure Code, what expert information is which one expert stated at the court hearing.

In certain cases, even investigators rely heavily on expert information to disclose further a criminal event is being handled. Cases criminal acts such as murder, persecution and rape is an example of a case where an investigator needs labor assistance experts such as forensic experts or other expert doctors, to provide medical information about the condition of the victim which subsequently had an effect for investigators actions in further uncovering the case. One case that shows that the police as investigating authorities desperately need expert information in action the investigation he did was in the disclosure of a murder case. A murder case where a person's life is lost due to an act or condition that sometimes requires assistance with expert information in his investigation. Expert information this is meant by information from a doctor who can help the investigator in providing evidence in the form of legal and valid medical information accountable for the circumstances of the victim, especially related by proving the existence of signs of an act of murder. The doctor's information meant is poured out written in the form of a letter from the medical examination called *visum et repertum*. According to his understanding, *visum et repertum* is interpreted as a written report from a doctor who was sworn about what was seen and found in the evidence examined and also contains conclusions from the examination for purposes justice (Idries, 1997). In the Criminal Procedure Code (KUHP) on Article 133 and 134 regulate related to post-mortem (forensic autopsy). Article 133 says:

In the event that the investigator in the interests of the judiciary handles a victim whether wounded, poisoned or dead allegedly because of an incident which is a criminal act, he / she is authorized to submit expert information requests to judicial medical experts or other doctors and / or experts .

Furthermore Article 134 says:

In the event that it is very necessary where the evidence for post-mortem is no longer possible to avoid, the investigator must inform the victim's family in advance . if family objections, investigators are also required to explain clearly the purpose. If in two days there is no response from the family or parties who need to be notified not found, the investigator must immediately implement the provisions referred to in article 133 paragraph (3) of this law. In essence, the investigator can ask the doctor to autopsy the body if there are things leading to it (Hamzah, 2011). For those who try to block the autopsy process, they can be convicted according to law 73/1958

concerning the Criminal Code (KUHP) which is stipulated in article 222 of the Criminal Code:

Namely those who intentionally prevent, obstruct or frustrate forensic body examinations , threatened with imprisonment for a maximum of nine months or a fine of at most four thousand five hundred rupiahs.

3. Autopsy in Indonesia Culture

Generally, Broadly speaking, the arrangements related to the implementation of the autopsy for the sake of justice are very clear, but the effectiveness of law enforcement is strongly influenced by several factors. According to Soerjono soekanto there are five factors that influence law enforcement in Indonesia which are closely related to the essence of law enforcement and are also a measure of the effectiveness of law enforcement (Soekanto, 2008), which is described as follows:

1. Legal factor itself
2. Law Enforcement Factor
3. Means Factor
4. Community Factor
5. Cultural Factor

The five factors above greatly influence the implementation of autopsies, mainly community and cultural factors in Indonesia. For this reason, the police in Indonesia are very careful in deciding to carry out an autopsy on a body that will be used for the benefit of the court. Indonesian society highly upholds human values, especially respect for the corpse so that Indonesian society tends to reject the implementation of autopsies for several reasons including fear of mutilation, reasons for respecting the human body and religious reasons (Carwen, S. 2015) In the Indonesian community opinion, the autopsy is likened to the process of cutting or dismantling the human body (mutilation) where this is not justified by humanitarian values prevailing in Indonesia, so that when a murder event is badly needed an autopsy process, the family rather than the corpse refuses to implement autopsy. The second, with the existence of values of respect for the human body. Indonesian society is very respectful of the human body so that every corpse is immediately possible to be buried so as not to experience decay. The public's view that families have the right to determine the funeral of the corpse so that the police sometimes experience difficulties with permission from the family of the corpse. Third, religious reasons. Indonesia is likened to a country that highly respects religious values and has high tolerance among religious people. Basically religions refused to carry out an autopsy, but for certain reasons religion allowed an autopsy. Indonesia as a country with a majority of Muslim believers strongly adheres to the belief that the body must be respected, so that most people refuse to attempt an autopsy. For this reason, the Indonesian Ulama Council (MUI) issued a fatwa number 6/09 on the autopsy of bodies which stated that it allowed the implementation of autopsies for several cases, one of which was the interests of the court. It is on this basis that the police make maximum efforts to carry out an autopsy in the interests of law enforcement. Although the culture of Indonesian society upholds respect for the corpse , the community must also respect applicable laws where the autopsy must be carried out as long as it is in the interests of the court and in accordance with the rules applicable law. Therefore, all parties must be

involved in the process of carrying out the autopsy of the government, the police and the community so that the autopsy can be carried out in accordance with applicable law.

4. Conclusion

Legal arrangements for conducting autopsies for the interests of Indonesian courts are very clear. An autopsy is done to find out the cause and effect of death to someone, and the results of the report from the autopsy are used as evidence in the court later. However, in Indonesia, the autopsy has been rejected because of the culture of the community, where the community upholds the values of respect for the corpse, so the police have to ask permission from the family of the corpse for the autopsy. As a suggestion, the Indonesian government must actively provide information and understanding to the public regarding the implementation of an autopsy where this autopsy is carried out with respect for the bodies carried out by the autopsy process. So that the community can receive and give permission to the police to be able to carry out an autopsy on the body.

References

- [1] Boyoh, M. (2015). Independensi Hakim Dalam Memutus Perkara Pidana Berdasarkan Kebenaran Materiil. *Lex Crimen*, 4(4).
- [2] Carwen, S., Fitrasanti, B. I., & Darmawan, B. (2015). Community Knowledge and Perception on Autopsy in Jatinangor, West Java from August to October 2013. *Althea Medical Journal*, 2(3), 303-307.
- [3] Hamzah, A. (2011). *KUHP dan KUHP edisi revisi*. Jakarta: Rineka Cipta.
- [4] Idries, A. M. I., & Tjiptomartono, A. L. (2008). *Penerapan Ilmu Kedokteran Forensik Dalam Proses Penyidikan*. Jakarta: Sagung Seto.
- [5] Idries, A. M. I. (1997). *Pedoman Ilmu Kedokteran Forensik*. Jakarta: Binarupa Aksara
- [6] Rindo, R., & Efendi, E. (2015). Kedudukan Kedokteran Forensik dalam Penyidikan Tindak Pidana di Direktorat Reserse Kriminal Umum Kepolisian Daerah Riau. *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum*, 2 (2), 1-15.
- [7] Soekanto, S. (2008). *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta: PT. Raja Grafindo Persada.
- [8] Sofyan, A., & Asis, A. (2013). *Hukum Acara Pidana Suatu Pengantar*. Yogyakarta: Rangkang Education.
- [9] Valianto, A. (2017). Peran Otopsi Forensik Dalam Penegakkan Hukum. *Proceeding Annual Scientific Meeting 2017*, 36-39