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STATEMENT OF EXPERT IN HOLDING SPECIAL CASES AT THE INVESTIGATION STAGE BASED ON PERKAP 6 OF 2019 CONCERNING INVESTIGATION OF CRIMINAL ACTS

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Abstract: As a form of implementation as a rule of law state, law enforcement officers consisting of police, prosecutors, judges and lawyers are presented to carry out this function. The police as one of the law enforcers carry out security measures in the community, in every action they are subject to formal law, namely the Criminal Procedure Code (KUHAP). In the Criminal Procedure Code, the task of the police to disclose a crime or also called a crime is known as an investigation. In the investigation stage which aims to make light of a crime and find the suspect by collecting evidence, of course, must go through the correct and accountable procedures. A little wrong in carrying out the procedure, the investigator as a user in the investigation in his actions makes it clear that the crime must collect evidence that can really be tested in quality. In the Criminal Procedure Code, evidence is contained in Article 184 paragraph (1) which consists of witness statements, expert statements, letters, instructions and statements of the accused. As for the evidence that is in the spotlight in the expert's statement, where the expert's statement is evidence that is felt to play a significant role in determining the elements of the crime which in the end can shed light on the crime in the investigation stage. KUHAP as the holy book of criminal law practitioners in enforcing criminal law is certainly expected has all the facilities or in other words can accommodate all the sense of justice for the parties involved in it. As we also know that the Criminal Procedure Code was born in 1981, if we feel that he is already 40 years old, if we equate it with human age, it can be said that he is entering adulthood. The maturity of the KUHAP so far can be marked by the persistence of the Criminal Procedure Code as the basis for law enforcement and justice seekers in criminal cases even though there are patchworks here and there in the form of implementing regulations and in the form of a Supreme Court Circular to provide perfection and fulfill the people's sense of justice.

Keywords: expert; case title ; investigation ; criminal act.

1. INTRODUCTION

Our Constitution confirms that the Republic of Indonesia is based on law, not based on mere power. This means that the law plays an important role in the life of

the state and society. Law is a guideline of behavior for all members of society covering all aspects of life, for the sake of order and justice. The lack of a sense of justice that is protected by law is one of the things that is known that investigation is the gateway to the criminal procedure process in Indonesia. Investigators as executors of investigative tasks begin actions in making light of criminal acts by searching for and collecting evidence.

In seeking and collecting such evidence, it must be based on procedures that breathe the protection of human rights. Investigators, especially investigators from the Police of the Republic of Indonesia (POLRI) have guidelines for carrying out investigative actions, which are generally regulated in Law Number 8 of 1981 concerning Criminal Procedure Law, besides that there is also Law Number 2 of 2002 concerning the Indonesian National Police . These two laws are the basis for investigators to carry out investigations, but to regulate in detail how an investigation is carried out properly and correctly, of course there must be rules or norms that are regulated more technically, this regulation among the POLRI is named the Regulation of the Chief of Police of the Republic of Indonesia or what is often shortened to PERKAP.

The newest PERKAP that regulates investigations by POLRI members is PERKAP Number 6 of 2019 concerning criminal investigations. Criminal procedural law has a very strong positivistic aura, because the product produced is in the form of rules that regulate procedurally. This is in line with the thoughts of Rudolf Stammler who stated that law is a human juridical will. This will triggers the collective consciousness (not individual) of a human society to form legal regulations. The juridical will, then, is not in a psychological sense, but in a transcendental meaning (Tanya, 2019).

The objective of criminal procedural law is to seek the truth. Law enforcers ranging from police , prosecutors to judges in investigating, prosecuting and adjudicating cases must always be based on the truth, must be based on things that really happened. For this reason, officers who have extensive experience, qualified education and intelligent brains are also needed, who are strong in averting and resisting all temptations (Soesilo, 1982). source of social anxiety (Prakoso, 1987).

2. METHODS

The type of research that the author uses is normative legal research, namely research that obtains legal materials by collecting and analyzing legal materials related to the issues to be discussed. Legal research is carried out to find solutions to legal issues that arise, therefore, legal research is a research within the framework of *know-how* in law. The result achieved is to provide a prescription regarding what should be the issue raised (Marzuki, 2015). The nature of the research in thesis writing here is the nature of prescriptive research, namely the nature of the research in thesis writing here is the nature of prescriptive research, re-examining according to legal theory of norms that are considered to be still vague (*vage of norm*).

3. RESULTS AND DISCUSSION

Expert testimony as legal evidence can be done in two ways . First, by asking for expert testimony at the investigation level by the investigators as stated in Article 133 of the Criminal Procedure Code. According to this article, expert testimony is given in writing by letter . Upon this request, the expert explains the results of his examination in the form of a report. The second way, as stipulated in Article 179 and Article 186 of the Criminal Procedure Code, is that expert testimony is given verbally and directly in court.

The reasons for the need for expert legal testimony at the investigative level are:

a. In terms of formal : Information from legal experts is needed at the investigative level with the reason to fulfill the provisions in Article 184 of the Criminal Procedure Code, because it is not uncommon for investigators to experience doubts about the legal facts found during the examination of criminal cases. Or in other words to support existing evidence.
b. In terms of material : The need for legal expert testimony at the investigative level from a material point of view is to confirm the article being suspected or to ascertain the facts contained in the series of investigative processes on the article being suspected.

In the examination of criminal cases at the investigative level, not all cases or matters require expert testimony. In general, what requires expert testimony is in *lex specialis* cases , where in this case investigators use laws that are outside the

Criminal Code, for example banking crimes, *money laundering crimes* , *cybercrimes* . Examination of expert testimony at the investigative level can be carried out in two ways that have been stipulated in the law .

When a legal expert is asked to provide information during the investigation stage, usually the expert himself makes a report in the form of a legal opinion *and* then sets it out in the format of Minutes of Examination (BAP). In the request letter , some have included a chronology of the case and a list of questions, some are only a list of questions, and some even only submit files in which the expert must study himself, compile a list of questions and provide answers in a legal opinion.

In principle, expert evidence does not have a binding and decisive evidentiary value. Thus, the strength value of the expert testimony is the same as the power value attached to the witness testimony, which has the value of free evidentiary power or *vrijn bewijs-kracht* . The judge is free to judge and is not bound by it. However. In this judge's judgment , one must really be responsible on a moral basis for the realization of true truth and for the sake of upholding the law and legal certainty.

In essence, expert testimony is information given by a person who has special expertise on matters needed to shed light on a criminal case for the purposes of examination (Article 1 point 28 of the Criminal Procedure Code). Concretely, the expert's statement as a gradation of the two valid pieces of evidence (Article 184 paragraph (1) letter b of the Criminal Procedure Code) is what an expert states in court (Article 186 of the Criminal Procedure Code). However, according to the elucidation of Article 186 of the Criminal Procedure Code it is stated that this expert testimony can also be given at the time of examination by an investigator or public prosecutor which is set forth in a report form and made keeping in mind the oath when he received a position or job. If this is not given during the examination by the investigator or public prosecutor, during the examination at trial he is asked to provide information and it is recorded in the form of an examination report. The statement was given after he took an oath or promise before the judge.

3.1. Expert Position in Criminal Procedure Law

A. Karim Nasution said: We should not think that the person who is called an expert must be someone who has received special education or someone who already has a certain diploma. According to the criminal procedural law, everyone can be appointed as an expert, as long as they are deemed to have specific knowledge and experience regarding a matter, or have more knowledge and experience regarding that matter (Nasution, 1985)

This does not mean that in needing expert assistance we must always seek the help of scholars or experts in science, but also from people who are experienced and less educated, but are nevertheless very intelligent in their field (scherpzinnig). For example: carpenters, shoemakers, weapons makers, hunters and so on who in certain matters can provide much needed help.

Article 179 of the Criminal Procedure Code determines:

1) Everyone who is asked for his opinion as a judicial medical expert or other expert doctor is obliged to provide expert testimony for the sake of justice.
2) All of the above provisions for action also apply to those who provide expert testimony, provided that they take an oath or promise to provide the best and true information according to their knowledge in their field of expertise.

Based on Article 179 paragraph (1) of the Criminal Procedure Code, two groups of experts can be categorized, namely medical experts and other experts. The requirements for the validity of expert testimony are (Muhammad, 2007):

1) Information provided by experts
2) Have special expertise in a particular field.
3) According to knowledge in the field of expertise.
4) Given under oath.

This written statement is regulated in Article 133 of the Criminal Procedure Code which stipulates that the expert opinion requested by the investigator is set forth in written form. Information in written form from an expert is what is commonly referred to in legal practice *as visum et repertum*.

The testimony of legal experts is usually given directly before the investigator based on a summons. Examination of the testimony of legal experts is preceded by taking an oath or promise. Taking an oath or promise made before the investigator stating that he will provide information to the best of his knowledge.

In judicial practice, expert testimony in the form of *visum et repertum* (regulated in the *Staatsblad* of 1937 Number 350, *Ordonnantie* 22 May 1937 concerning *visa reperta van genesskundigen*) which is widely attached to the Minutes of Examination (BAP) especially against criminal acts Article 285 of the Criminal Code, Article 351 Criminal Code, Article 359 Criminal Code, Article 360 Criminal Code, and so on instead of a statement. When viewed through a more intense study of judicial practice, it can be concluded that expert testimony in the form of this report usually raises two nuances of evidence.

3.2. Title of Case Part of Investigation

The title of a case is an activity of conveying an explanation of the investigation and investigation process by investigators to the title participants and followed by group discussions to obtain responses/inputs/corrections in order to produce recommendations to determine the follow-up to the investigation and investigation process (Article 1 number 24 of the Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Investigation of Criminal Acts).

The purpose of conducting a case title by investigators at the investigative level is to confirm the determination of the elements of the alleged article and to achieve efficiency and completion in case handling. Conducting a case title for an indication of a criminal act against a person is also expected to minimize pretrial conduct for investigators, in this case the police.

Through the case title (ordinary) it is also determined whether the status of case handling can be increased from investigation to investigation, as well as whether the investigation is continued or later declared completed. Not explicitly mentioned in the procedure above but often appearing in practice is the procedure for ending an investigation, which is taken if the case in question is (assessed) not a crime, or the complainant withdraws his complaint (in the case the case concerned is a complaint offense) (Safrina & et.al, 2017).

According to Article 9 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal

Acts, it is mandatory to conduct a case to determine 3 events that are suspected of being a crime; or Not a Criminal Act.

The results of the case that decided:

a. Is a criminal act, proceed to the stage of investigation;
b. Not a criminal act, an investigation is terminated; And
c. Cases of criminal acts are not within the authority of Polri Investigators, reports are delegated to the competent authority.

According to the Chief of Police Regulation No. 6 of 2019 concerning Criminal Investigation Management, case titles are included in the series of investigations. Article 33 paragraph (2) Perkap No 6 of 2019 concerning Management of Investigation of Criminal Acts, an investigation is a series of investigative actions in matters according to the method stipulated in the law to seek and collect evidence with that evidence to make clear about the crime that occurred and the use find the suspect. The series of investigations are carried out by investigators, assistant investigators, namely officials of the Republic of Indonesia Police who are given special authority by law.

Investigations are included in the criminal justice system and case titles are included in the series of investigations. The criminal justice system in Indonesia adheres to *the Due Process Model*, in which this model is enforced by what is called the " *Presumtion of Innocence* " (principle of presumption of innocence) (Wisnubroto & G. Widiartama, 2005). The importance of *the due process model* is to protect the rights of citizens from possible arbitrariness by state law enforcement officials (MK Decision Number 21/PUU-XII/2014.). If the case is held openly in the case of Basuki Tjahaja Purnama, it is clear that the criminal justice system in Indonesia has been neglected. The concept of *the due process model* upholds *the principle of presumption of innocence*. According to this concept, examinations at the levels of investigation, prosecution, and examination at trial courts must follow formal procedures as stipulated by law (Rahardjo, 2011).

3.3. The Urgency of Experts in Case Titles

Referring to the provisions of Article 1 point 28 of the Criminal Procedure Code, it is stated that what is meant by expert testimony is: Information given by

someone who has special expertise on matters needed to clarify a criminal case for the purposes of examination.

Someone is said to have or have special expertise, in this case it is a concept that is still abstract. Even though it has an abstract concept, in this case expert testimony is very important in order to assist law enforcement officials, especially judges at court hearings to prevent the occurrence of an erroneous trial, whether it is an error in the subject, object or application of the law in the process of examination and criminal justice.

The special expertise mentioned in Article 1 point 28 of the Criminal Procedure Code, in this case can be interpreted as related to the ability to explain or describe a particular object in order to assist the criminal justice process. The ability here according to the writer's opinion is based on experience, expertise or knowledge possessed by the witness. The term "experience" is usually attached to the empirical world, and conversely the term "experience" is usually placed in the theoretical realm, but it does not rule out the possibility that someone can be said to have "special skills" because they actually hold two professions at once, namely as a theoretical as well as a practitioner. .

Article 133 paragraph (1) of the Criminal Procedure Code in the event that an investigator for the benefit of justice handles a victim either injured, poisoned or dead allegedly due to an event constituting a criminal act, he has the authority to submit a request for expert information from a medical expert of the judiciary or a doctor and or other expert.

Article 179 paragraph (1) of the Criminal Procedure Code Every person who is asked for his opinion as a medical expert of the judiciary or a doctor or other expert is obliged to provide expert testimony for the sake of justice. Related to Article 179 paragraph (1) of the Criminal Procedure Code, that usually what is meant by "judicial medical expert is a forensic expert or post-mortem expert". However, the article itself does not limit it to judicial medical experts, but includes other experts.

In principle, the process of examining an expert witness before the court is no different from other witnesses, where before giving testimony before the court, the expert witness must first be sworn in according to the religion and belief that the sanction is sanctioned for. In Article 265 paragraph 3 HIR has been enacted to

explain: "That every testimony must be given under oath, and the Judge is not authorized to hear a witness outside of oath except in cases that are clearly determined by law".

When viewed from expert testimony with ordinary witnesses, we can see this, among others:

Witness statement ;

a. One (several) witnesses are summoned before the court to provide information about things that they saw, heard, or experienced themselves
b. Witness testimony must be oral, if it is written then it becomes written evidence
c. The position of a witness cannot be replaced with another witness unless both saw, heard and witnessed the incident

While the Expert Statement :

a. One (several) expert witnesses are summoned before the court to provide information based on their expertise on an incident
b. Expert testimony can be oral or written
c. another expert according to his expertise.

In principle substantially regarding expert testimony or in the Dutch legal family in accordance with Article 339 Sv. called *verklaringen van een deskundige* then the Criminal Procedure Code is spread over several articles, namely Article 1 number 28, Article 120, Article 133, Article 160 paragraph (4), Article 161, Article 179, Article 180, Article 184 paragraph (1) letter b, Article 186 and Article 187 letter c of the Criminal Procedure Code. In essence, expert testimony is information given by a person who has special expertise on matters needed to shed light on a criminal case for the purposes of examination (Article 1 point 28 of the Criminal Procedure Code).

The birth of expert testimony as one of the valid evidence in the Criminal Procedure Code is one of the legislators' efforts to correct law enforcement practices that often use methods of violence and torture against suspects and/or defendants to obtain confessions. With the help of expert testimony, it is hoped that law enforcement will be based more on *scientific crime detection* . The goal is that the practices of torture and violence in law enforcement practices a la kempetai IR and HIR can be eliminated, to be replaced by *scientific crime detection methods* .

The testimony of the expert who was not present at the trial with valid reasons, the statement is read out. If the expert's statement before being given in front of the investigator has taken an oath or promise (Article 120 paragraph (2) of the Criminal Procedure Code), then the value is the same as the expert's statement stated in court. If the expert's statement given before the investigator does not take an oath or promise, then the statement given is only a statement that strengthens the judge's conviction (compared to an expert who refuses to swear or promise after being taken hostage, still does not want to swear or promise).

That should be What must be done in a case title is that the investigator presents the results of the investigation or progress of handling the case before his superiors or co-workers with the aim of obtaining input, considerations and policy directions. In other words, a case title is a forum for questions and answers and discussion. In conducting cases, experts are sometimes invited in fields related to the case being investigated. Experts here are experts who have special competence in a particular field (legal or non-legal) and are considered capable of providing input based on their expertise. Because in principle the title of the case is for the benefit of the investigation, this event is not open to the public. If the reporting party or lawyer is asked to attend, they are only allowed to be mere observers.

To make a decision to do or not to conduct a case (ordinary or special) depends on the consideration of the severity of the case being handled. This means that the decision to hold a case depends on the needs of the police investigators themselves.

Implementation of case titles as an effort to find follow-up solutions to the completion of criminal investigations which are his responsibility and case titles can be used as a means of monitoring and controlling case investigations so that there are no irregularities and one direction and accelerating the completion of criminal investigations by utilizing the opinions of experts, practitioners, investigators and supervisors of investigators and other interested parties as well as case titles as a forum for communication between law enforcers.

We recommend that the issue of " *support*" funds should be a concern because on the one hand the demands that the state wants for witnesses, especially expert witnesses, to provide quality information and be able to assist law

enforcement officials in uncovering the cases at hand, however, it is very unfortunate that the wishes of enforcement officials the law is not offset by the cost assistance that has been incurred by the witness. So, without financial support for a witness, where is it possible to get a qualified expert witness?

4. CONCLUSIONS

Investigation is a series of investigative actions in matters and according to the method regulated in the Criminal Procedure Code to seek and collect evidence that occurred and to find the suspect. The Criminal Procedure Code does not specifically stipulate what are the conditions for hearing expert testimony in court proceedings. As for what is referred to in the Criminal Procedure Code, as long as he has 'special expertise' on matters needed to clarify a criminal case and is submitted by certain parties, then his statement can be heard for the purposes of examination. Expert testimony is the opinion of a person given under oath in court about a matter that is known according to his experience and knowledge. That the implementation of case titles in the investigation process is very beneficial for investigators in determining the direction of investigations, reducing errors in the investigation process so that the investigation process can proceed according to the provisions of the applicable regulations and case titles as a means of supervisory control over investigator superiors to investigators in order to achieve justice, legal benefits and legal certainty as well as a forum for victims/reporters to submit legal complaints during investigations. Whereas the existence of a case title in the investigation process can prevent arbitrary determination of suspects without sufficient evidence and to prevent back and forth of case files from investigators to public prosecutors and prevent the results of investigations if P21 (stage 2) is not released at court.

The presence of experts at the stage of investigation at the level of investigation is to help clarify a criminal event that has occurred. Expert testimony in investigations is to give strength and confidence to investigators when later submitting case files to the public prosecutor. The public prosecutor himself is assisted by expert testimony at the investigative level, because it will see the criminal events that will be prosecuted in a more complete and comprehensive manner. No sanctions or consequences were found in Perkap 6 of 2019 concerning

Investigation of Criminal Acts, when the investigation did not present an expert in the title of the case. Even though the provisions in Article 33 paragraph (2) of Perkap 6 of 2019 contain the word mandatory, this is not balanced with sanctions or consequences when investigators fail to present experts in their case. From an external point of view, the suspect's legal adviser may raise objections, because they consider that the determination of the suspect by their client is insufficient, which in the end leads to the emergence of a pretrial request with the object of determining the suspect.

5. SUGGESTION

It is advisable for investigators in each case title to be able to present experts to help find material truth. The provisions in PERKAP Number 6 of 2019 concerning Investigation of Criminal Acts are in accordance with legal requirements both in accommodating the development of the times and the legal needs of society. However, it needs to be emphasized regarding experts in case titles, if investigators do not intentionally or negligently present experts in case titles, sanctions should be included, so that these provisions have the power to compel to be obeyed.

To Investigators, to strive for the implementation of case titles in the investigation stage to determine the direction of the investigation and reduce errors. The title of the case also provides a sense of justice for the complainant/victim or the reported party in the investigation thereby reducing the potential for pretrial lawsuits regarding the determination of the suspect. To drafters of regulations to include case titles in the RKUHAP as a basic guideline in the criminal investigation process.

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