Determination of Expert Position in Holding Special Cases in the Police Investigation Stage

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Abstract
When the expert has been presented in the investigation stage, of course, it will have a good impact on the results of the case filing. However, problems still need to be addressed regarding the urgency and legal consequences of expert testimony in the investigation stage. This study examines the urgency of presenting experts in the case title in the investigation stage and the legal consequences if the expert needs to be presented in the case title in the investigation stage. This study uses a normative juridical method. The results of the study concluded that the public prosecutor himself was helped by the existence of expert information at the investigation level because it would see the criminal events that would be prosecuted more completely and thoroughly. Second, no sanctions or consequences were found in Perkap 6 of 2019 concerning Criminal Investigations when the investigation does not present an expert in the title of the case. Although the provisions in Article 33 paragraph (2) of Perkap 6 of 2019 contain the word mandatory, it needs to be balanced with sanctions or consequences when investigators fail to present experts in their case titles.

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 behavior guideline for all members of society covering all aspects of life for the sake of order and justice. The lack of

a sense of justice protected by law will be a source of public unrest.[1] As a form of embodiment of Indonesia as a rule-of-law country, laws and regulations were made, one of these laws is the Criminal Procedure Code which regulates how to proceed in criminal law.[2]

In addition, as a form of implementation as a rule of law country, law enforcement officers consisting of police, prosecutors, judges, and lawyers are presented to carry out this function. The law must be enforced to realize and realize the national goals of the Unitary State of the Republic of Indonesia, which are clearly stated in the fourth paragraph of the 1945 Constitution, namely protecting the entire Indonesian nation, promoting public welfare, educating the nation's children, and participating in realizing world ideals. Orderly principles of independence, eternal peace, and social justice.[3] 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 duty of the police to uncover a crime, also known as a criminal act, is an investigation.

As it is known, an investigation is a 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, there must be rules or norms that are regulated more technically. This regulation among the Indonesian National Police (POLRI) is named the Regulation of the Chief of Police of the Republic of Indonesia, or what is often shortened to Police Regulations (PERKAP). The newest Police Regulations (PERKAP) that regulates investigations by Indonesian National Police

[1] Djoko Prakoso. *Upaya Hukum Yang Diatur Didalam KUHAP*. Aksara Persada Indonesia, Jakarta, 1987, hlm. 21.

[2] Masrizal Afrialdo, "Pelaksanaan Penyelidikan dan Penyidikan Perkara Pidana oleh Kepolisian Terhadap Laporan Masyarakat di Polisi Sektor Lima Puluh", JOM Fakultas Hukum Volume III Nomor 2, Oktober 2016, hlm. 8

[3] Albertus Luter, Ramlani Lina Sinaulan, and Mohamad Ismed, "Pre-Trial: The Suspect' Ultimate Weapon And Correction Tool For Investigators To Be More Professional From The Perspective Of Legal Expediency," *Policy, Law, Notary, and Regulatory Issues (POLRI)* Volume 1 ISSUE 2, April 2022, p. 74

(POLRI) members is Police Regulations (PERKAP) Number 6 of 2019 concerning criminal investigations.

The objective of criminal procedural law is to seek the truth. Satjipto Rahardjo, in progressive law, argues with the sentence, first, the law is for humans and not the other way around. The law does not exist for someone but for something broad: human dignity, happiness, welfare, and human dignity. The two laws are not absolute and final institutions because the law is always in the process of existence (law as a process, law in making).[4] Law enforcers ranging from the police and prosecutors to judges in investigating, prosecuting, and adjudicating cases must always be based on the truth and must be based on things that really happened. For this reason, officers are needed, besides having extensive experience, quality education, smart brains, and firm personalities, who are strong in averting and resisting all temptations.[5]

The Criminal Procedure Code, as found in the general elucidation section, recognizes at least ten principles that serve as a reference for the truth or teachings of its principles as described below:

1. *The principle of equality before the law:* Equal treatment of everyone before the law without discriminating in treatment.

2. *The principle of legality in coercion:* Arrest, detention, search, and confiscation are only carried out based on a written order by an official authorized by law and only in cases and in a manner regulated by law.

3. *The principle of presumption of innocence:* Everyone suspected, arrested, detained, prosecuted, and presented before a court hearing must be presumed innocent until a court decision states his guilt and obtains permanent legal force.

4. *The principle of remedy and rehabilitation:* To a person who is arrested, detained, prosecuted, or tried without reason based on law and because of a mistake regarding the person or the law applied, compensation and rehabilitation must be given from the level of investigation and law enforcement officials who intentionally or because of their negligence cause

[4] Ari Trestiawan, Bambang Sugiri, and Prija Djatmika, "Progressive Legal Perspective of the Settlement Child Criminal Action as a Narcotics User in the Malang City Police Resort," *International Journal of Multicultural and Multireligious Understanding* Volume 8, Issue 4, April 2021, p. 503

[5] R. Soesilo. *Hukum Acara Pidana (prosedur penyelesaian perkara pidana menurut KUHAP bagi penegak hukum)*. PT. Karya Nusantara, Bandung, 1982, hlm. 19

the principle of the law is violated, prosecuted, sentenced and or subject to administrative punishment.

5. *The principles of fairness, impartial, impersonal, and objective:* Justice must be carried out quickly, at a low cost, and free, and honesty and impartiality must be applied consistently at all levels of justice.

6. *The principle of legal assistance:* Everyone who is involved in a case must be given the opportunity to obtain legal assistance, which is solely given to carry out the interests of self-defense.

7. *Miranda Rule:* To a suspect, since the time of the arrest and detention, apart from being obliged to be informed of the charges and the legal basis for which he was charged, he must also be informed of his rights, including the right to contact and seek the assistance of a legal adviser.

8. *Presentation principles:* The court examines criminal cases in the defendant's presence.

9. *The principle of openness:* Court hearings are open to the public except in matters regulated by law.

10. *Supervision principle:* Supervision of the implementation of court decisions in criminal cases is carried out by the chairman of the relevant district court.[6]

In the investigative stage, which aims to make light of criminal acts and find suspects by collecting evidence, of course, the correct procedures must be followed and can be accounted for. 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 be tested in quality. In the Criminal Procedure Code (KUHAP), evidence is contained in Article 184 paragraph (1) consisting 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 have a sufficient role in determining the elements of the crime, which can make the crime clear in the investigation stage.

As for Police Regulations (PERKAP) number 6 of 2019 concerning criminal investigations, this is the newest regulation, which before the Police Regulations (PERKAP) number 14 of 2012 concerning investigation

[6] Luhut M.P. Pangaribuan. *Hukum Acara Pidana Surat-Surat Resmi di Pengadilan oleh Advokat.* Papas Sinar Sinanti, Jakarta: Djambatan. 2013, hlm. 1 - 4.

management came into effect. Several changes occurred between the two regulations within the scope of this investigation, one of which is in the spotlight regarding case titles that must present experts as stated in the Chief of Police Regulation Article 33 paragraph (2) "Implementation of Special Case Titles must invite oversight and legal functions of the Police as well as experts" The necessity to present experts here needs to be appreciated as a step forward in the investigation process, because in general in The Criminal Procedure Code (KUHAP) one of the tools of evidence is expert testimony. So when experts are presented at the investigation stage, of course, it will have a good impact on the results of the case filing. However, problems still need to be addressed to the urgency and legal consequences of expert testimony during the investigation stage. Based on the formulation of the problem above, this study aims to analyze the urgency of presenting experts in the title case at the investigation stage and to analyze the legal consequences if the expert is not presented at the case stage during the investigation stage.

2. Research Method

Based on the background of the problems above, the problems that are the focus of this research are: first, what is the urgency to present experts in case titles in the investigation stage? Second, what are the legal consequences if the expert is not presented at the trial stage during the investigation?

3. Results and Discussion

The Urgency of Experts in Case Titles

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

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

judiciary or a doctor and or other experts.

Article 179 paragraph (1) The Criminal Procedure Code (KUHAP) Everyone 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, usually what is meant by "judicial medical expert is a forensic expert or post-mortem expert." However, the article does not limit it to judicial medical experts but includes others.

As for what is referred to in The Criminal Procedure Code (KUHAP), as long as he has 'special expertise' on matters needed to clarify a criminal case and is submitted by certain parties, his statement can be heard for 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.[7]

The Defendant or the Public Prosecutor may request the presence of an expert at trial. In addition, the judge/chairman of the session may appoint a person or several experts to provide information either by letter or in writing, which is confirmed by an oath or promise according to the truth to the best of his/her knowledge and experience. Expert testimony is needed to increase the judge's conviction regarding a matter in a particular field, which can only be explained by experts in the field concerned, for example, experts in banking, experts in state administration, ballistics experts, and others.

In principle, the process of examining expert witnesses 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. In Article 265, paragraph 3, the Herzien Inlandsch Regulation (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 matters clearly determined by law."

The purpose of the expert witness being sworn in is the same as that of witness testimony in general, namely, that the witness gives correct information in accordance with the expertise he has, and if the information he gives turns out to be untrue, then the witness concerned can be charged with perjury.

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

Witness testimony

a. One (several) witnesses are summoned before the court to provide information

[7] Sudikno Mertokusumo. *Hukum Acara Perdata Indonesia*. Liberty, Yogyakarta, 2009, hlm. 165.

about things they saw, heard, or experienced themselves.

b. Witness testimony must be oral, if it is written, it becomes written evidence.

c. The position of a witness can only be replaced with another witness if 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. The position of an expert can be replaced with another expert according to his expertise.

In essence, expert testimony is information given by a person with special expertise on matters needed to shed light on a criminal case for examination (Article 1 point 28 of the Criminal Procedure Code (KUHAP)). Moving on from that, according to the author, the functions or benefits of an expert's statement in providing information in the criminal justice process are:

a. As proof of information in clarifying the problems that arise in a trial in court.

b. As a tool that is useful for providing clear information regarding a criminal case that occurs by using his expertise or based on what he understands or knows about a criminal case.

c. This is evidenced by using his expertise to provide information to defend or benefit the suspect or defendant.

d. Moreover, it can also function to add to the judge's confidence in making a decision or decision in the trial.

This is evidenced by using his expertise to provide information to defend or benefit the suspect or defendant. It can also function to add to the judge's confidence in making a decision or decision in court.

Expert testimony is very much needed in handling a case in general and especially in examining criminal cases. Not all law enforcers, such as the Police, Prosecutors' Office, and Courts, have control over all criminal matters/events that occur in society, such as in counterfeiting cases, cases of abuse using weapons, counterfeiting money, or forging letters and so on.

To cover the limited knowledge of law enforcement officials, of course, they can use people with special expertise according to their profession/expertise. This is used to assist in solving problems or legal issues that occur.

The Criminal Procedure Code (KUHAP) explicitly states that the judge, in

deciding a case at hand, must at least be based on two pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code (KUHAP). If we look at the evidence contained in Article 184 of the Criminal Procedure Code (KUHAP), it includes:

a. Witness statement

b. Expert statement

c. Letter

d. Instruction

e. Defendant's Statement

Article 224 of the Criminal Procedure Code (KUHAP) explains that: Anyone summoned as a witness, expert, or interpreter according to law deliberately does not fulfill obligations under the law which must be fulfilled, is threatened.

1. In a criminal case with a maximum imprisonment of nine months.
2. In other cases, with a maximum imprisonment of six months.

The first condition is that expert testimony is provided by someone who is not a legal entity or foundation or others. Another possibility is that one person can also be several people who are members of the team (assembly) of experts.

The second condition is that the statement from the person must have the ability of knowledge and special expertise, not only by someone who has general expertise. The third requirement is that what is explained is about a matter or condition which is only necessary in a criminal case so that it does not include matters or circumstances which are explicit or that the judge already knows. Likewise, according to the indictment, it does not cover matters already known by the public or a situation (matter) irrelevant for proving a criminal case being investigated as fulfilling one of the elements contained therein.

The fourth requirement, what is meant is that something or a condition that is needed to be known by the judge will make the criminal case "clear." So that it will appear that something or a situation that was initially "dark" or "unclear" becomes "bright" or appears "clear," namely regarding the fact that something or the circumstances of the criminal case are proven.

The fifth condition, which is meant by the last condition, relates to the use, benefit, or urgency to examine the case because if there is no use, benefit, or urgency for the benefit of the examination, expert testimony is not needed.[8] The

[8] R. Soeparmono. *Keterangan Ahli dan Visum Et Repertum dalam Aspek Hukum Acara Pidana*. Semarang: Satya Wacana, 2002, hlm. 42-43.

use of expert evidence has been used since the beginning, namely in the investigation process. The investigation is a series of actions carried out by investigators in matters according to the manner regulated by law to search for and collect evidence that occurred and to find suspects. The Criminal Procedure Code (KUHAP) Article 120 paragraph (1): "In case an investigator deems it necessary, he can ask for the opinion of an expert or a person with special expertise."

In principle, expert testimony does not have binding and decisive evidentiary power. Thus the value of the strength of evidence from the expert's testimony is the same as the value of the strength of evidence attached to the witness' evidence. The value of the strength of proof attached to the expert testimony is as follows:

a. Has a value of "free" or "vrijbewijskracht" evidentiary power. There is no inherent value in the power of proof that is perfect and decisive. It is up to the judge's judgment. The judge is free to judge and is not bound by it. The judge is not obligated to accept the truth of the expert's testimony. However, in using the authority of freedom in evaluating evidence, the judge must really be responsible, on a moral basis, for the realization of actual truth and for the sake of law enforcement and legal certainty.
b. Following the minimum principle of proof stipulated in Article 183 of the Criminal Procedure Code, an expert statement that stands alone without being supported by any other means of evidence is insufficient and insufficient to prove the defendant's guilt. Especially if Article 183 of the Criminal Procedure Code is connected with the provisions of Article 185 paragraph (2) of the Criminal Procedure Code, which confirms that one witness is not enough to prove the defendant's guilt. This principle also applies to expert evidence.

The testimony of an expert alone is not enough to prove the defendant's guilt. Therefore, in order for the expert's testimony to be considered sufficient to prove the defendant's guilt, it must be accompanied by other evidence. Expert testimony as evidence generally does not relate to the subject matter of the criminal case being examined. Its nature is more intended to explain something less clearly about a thing or situation. In certain circumstances, the testimony of several experts can be assessed as two or more pieces of evidence that can be considered to fulfill the minimum principle of proof stipulated in Article 183 of the Criminal Procedure Code. So it must be considered sufficient to prove the guilt of the accused.

Besides that, Law no. 2 of 2002 concerning the Indonesian National Police has

also mandated in Article 16 paragraph (1) letter g that "brought in the necessary experts in connection with the examination of cases."[9] This means that Law No. 2 of 2002, as a guideline for members of the police, has emphasized to require the involvement of experts in the process of investigating cases.

Legal Consequences If the Expert Is Not Present in the Case

An expert present at a court hearing is not someone who has little understanding of knowledge and experience in his profession. However, expert testimony is a part of the evidence and the evidentiary system in criminal cases, specifically corruption cases. In providing information, most of it reflects the actual situation and is ideal. Independent does not only belong to experts. In the judicial component, judges are far more neutral, independent, and professional are the hallmarks of judges. If you look at this, the existence of expert testimony is seen as a straight line that is equal in court proceedings.

The position of the expert itself is seen by the public prosecutor, judges, and academics as only part of the evidence. It does not always have to be presented at court hearings. Experts are used if the evidence is lacking, according to the public prosecutor. For the Panel of judges, the expert's statement if the information justifies the understanding of the logic of thinking and the science of the judge will be used if it is contradictory, then it will not be used as a recommendation. The nature of the expert's testimony itself is only a recommendation for the judge to find out from a specific theoretical point of view.

The entry of an expert into a trial of a criminal case is actually not something that is allowed just like that. The judge as the holder of administrative power in court, is given the authority to accept or reject an expert who wishes to give his opinion before the court.

Even though no legal norms explicitly regulate when and in what cases an expert is allowed or not to give testimony at trial, judges in several cases have refused to testify against experts submitted to testify before a trial. As far as can be traced, the refusal is generally based on formal educational qualifications and the capacity of the expert concerned. Related to formal education can be seen in the case of the Paluh Merbau Bridge corruption trial. Chairman of the Panel of Judges Suharjono, along with member judges Oloan Silalahi and Immanuel Tarigan, firmly rejected the expert witness presented by the Public Prosecutor (JPU) Jhonwesli Sinaga, on the grounds that expert witness Parman did not have

[9] Mulyadi M. Umanailo, "Penyidikan Dalam Penanganan Tindak Pidana Umum Menurut KUHAP", *Jurnal Lex Privatum* Vol. IV No. 6, Juli 2016, hlm. 141

expert certification in the bridge sector but in the concrete field.[10] This judge's view aligns with the opinion of Rudy Satriyo Mukantardjo, who stated that an expert is someone who knows and or has experience with certification. According to Rudy, the formal education of an expert who will testify in court must be higher than most people's education level. In addition, experts are also active in academic activities.[11]

Meanwhile, the rejection related to expert capacity can be seen in the tax evasion case with the defendant Suwir Laut. In that trial, the Panel of judges rejected the expert witnesses submitted by the Public Prosecutor (JPU) because they considered the expert witnesses submitted to come from investigators from the Directorate General of Taxes, so they were considered not independent. On that basis, the Panel of judges asked the Public Prosecutor (JPU) to submit expert witnesses from independent institutions such as the Financial and Development Supervisory Agency (BPKP).[12]

However, the formal educational qualifications of an expert are also not a guarantee that the judge will definitely permit the expert to provide testimony before the court. In the corruption case involving the former Head of the Regional Office of the Ministry of Forestry and Plantations in East Kalimantan, Uuh Ali Yudin, the Panel of Judges chaired by Kresna Menon rejected the expert presented by the defendant, even though the expert had a doctorate in criminal law. The reason for this refusal was based on the fact that there was no criminal law material that had to be explained in the case because the Panel was considered to already have expertise on criminal law.[13]

From this, in general, it can be concluded that, in principle, the presence of a third party (expert) in a criminal justice process is a limited matter. The judge acts as a gatekeeper to assess whether the expert has competence in assisting judges or jurors in finding material truth so that fair decisions can be upheld.

The word "limited" is critical to underline because if the judge does not understand the meaning and purpose of the expert's statement, it can cause confusion in the examination. If the judge does not understand a situation's

[10] Btr.*"Saksi Ahli Ditolak Mejelis Hakim : Sidang Korupsi Jembatan Paluh Merbau"*.Harian Sumut Pos.http://www.hariansumutpos.com/arsip/?p=48685, diunduh 2/2/2021.

[11] Rafiqa Qurrata A'yun. *Kualifikasi dan Objektivitas Ahli Dalam Pemeriksaan Perkara Pidana. (Thesis, Universitas Indonesia. Juni 2010)*. 2010, hlm. 52.

[12] Iqbal Muhtarom.*"Kasus Asian Agri, Hakim Tolak Saksi Ahli dari Ditjen Pajak"*.http://www.tempo.co/read/news/2011/07/05/090344814/Kasus-Asian-Agri-Hakim-Tolak-Saksi-Ahli-dari-DitjenPajak, diunduh 10 Januari 2021.

[13] Crm. *"Tolak Mendengar Saksi, Hakim Tipikor Dituding Langgar KUHAP"*. http://www.hukumonline.com/berita/baca/hol16916/tolak-mendengar-saksi-hakim-tipikor-dituding-langgar-kuhap-. diunduh 10 Januari 2021.

definition, an explanation can only be given by someone with special expertise. The judge asks for an explanation from someone who has yet to gain expertise in the matter to be clarified. From a legal point of view, such information cannot be considered evidence according to law because the person giving the statement needs to have special expertise. Likewise, if the judge needs to understand better the purpose of examining expert testimony, the results of the expert examination may not have evidentiary value.[14] This, of course, can be detrimental to the defendant or the public prosecutor (JPU), furthermore, this will make the judicial process inefficient.

One example of the inefficiency of the expert examination in court can be found in the State vs. Habib Rizieq Shibab case. At that time, Habib and a number of his lawyers walked out as a form of objection to the testimony Roy Suryo was about to deliver regarding the videotape of the Monas incidents. Roy needed to be more competent in analyzing the results of other people's work. According to the defendant's attorney, "the expert witness who was present should have been the one who recorded, saw, heard, and experienced the riot at Monas."[15] The lawyer's explanation is actually irrelevant, considering that in that context, Roy Suryo was presented to the court to provide his analysis and opinion regarding whether the video of the Monas incident was genuine or fabricated. Meanwhile, concerning people who saw, heard, and experienced, referring to Article 1 number 26 of the Criminal Procedure Code (KUHAP), are witnesses, not experts.

Furthermore, a critical question that arises from this case is, what are the criteria used by the judge in deciding whether Roy Suryo is allowed to testify in the trial process? Whereas on the other hand, there are witnesses who are capable of providing evidence of the incident.

Concerning legal evidence according to the law, it is interesting to observe the emergence of expert testimony as one of the legal evidence in court. Because if you refer to the provisions of the previous criminal procedural law, namely Article 295 Herzien Inlandsch Reglement (HIR), it only mentions four valid pieces of evidence, namely: Testimonies, Letters, Confessions, and Signs.[16]

From the above, it can be said that the emergence of expert testimony as a means of evidence in Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP) is a form of criminal law political policy based on:

a. Efforts to realize good regulations following the circumstances and situation

[14] M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan*. Sinar Grafika, Jakarta, 2009, hlm. 277.

[15] *Ibid.*

[16] Karjadi. *Reglemen Indonesia yang Dibaharui*. Bogor: Politea, 1975, hlm. 84.

at a time.[17]

b. Policies from the state through authorized bodies to establish the desired regulations which are expected to be used to express what is aspired to.[18]

Carrying out criminal law politics means trying to realize a criminal law that follows the circumstances and situation at a time and for the future.[19] In that context, it can be said that expert testimony as legal evidence according to the Criminal Procedure Code (KUHAP) is a form of tool to prevent the possibility of human negligence or human error, which, when viewed from the perspective of the due process model aims to establish definitive factual guilt, where something that is considered as informal fact-finding is not allowed, such as torturing, using spies (informants) and false witnesses. Because in the criminal law concept, the truth sought is material truth.[20] Not only from the confession of the suspect.

In an effort to achieve material truth, the existence of expert testimony as a means of evidence is very important because the presence of expert testimony helps judges understand a matter that raises doubts. Thus, quoting Yahya Harahap, expert testimony also plays an essential role in sufficient minimum evidence that can be used to prove the defendant's guilt. [21]

In the investigation process, the investigator is given the authority to bring in the necessary experts in connection with examining the case.[22] In the event that it is necessary to clarify the situation of a problem that arises at a trial session, the head judge at the session may ask for expert testimony and may also request that new materials be submitted by those concerned. The experts referred to, besides those already mentioned in the Criminal Procedure Code (KUHAP), include forensic doctors, graphologists, now also include legal experts.

Expert testimony differs from witness testimony, but it is also difficult to clearly distinguish between them. Sometimes an expert doubles as a witness. Related to that, in substance, what differentiates expert testimony from witness testimony is the statement's content. Andi Hamzah, quoting Wirjono Prodjodikoro, said witness testimony is information about what the witness himself experienced, while expert testimony is about an assessment of things that have existed and

[17] Sudarto.*Hukum dan Hukum Pidana*, Bandung : Alumni, 1981, hlm. 159.

[18] Sudarto.*Hukum Pidana dan Perkembangan Masyarakat*. Bandung: Sinar Baru, 1983, hlm. 20.

[19] Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*. Jakarta : Kencana Prenada Group, 2010, hlm. 26.

[20] Andi Hamzah. *Hukum Aacara Pidana. Kebenaran materiil dalam sistem peradilan pidana dicari melalui fungsionalisasi hukum acara pidana, yang bertujuan mendapatkan kebenaran melalui alat bukti dan bahan bukti. Dengan kebenaran itu, maka hakim akan sampai kepada putusan (yang seharusnya adil dan tepat) yang kemudian dilaksanakan oleh jaksa*. Cet. 1. Jakarta: Sinar Grafika, 2001, hlm. 8-9.

[21] *Op.Cit.*

[22] Pasal 7 ayat (1, huruf h) UU No 8 Tahun 1981 tentang Hukum Acara Pidana

drawing conclusions about those things.[23]

It should be noted that the Criminal Procedure Code (KUHAP) distinguishes the testimony of an expert in court as evidence of "expert testimony" (Article 186 of the Criminal Procedure Code (KUHAP)) and written testimony from an expert outside the courtroom. as proof of documents (Article 187point c of the Criminal Procedure Code (KUHAP).[24] The best example of these two is the visum et reported made by a doctor. It should be stated here that the application of the Criminal Procedure Code, according to the Het Herziene Indonesisch Reglemen (HIR), expert testimony does not include evidence, but there is a provision, namely Stbl 1949 Number 275, which in the opinion of the author, does not conflict with the Criminal Procedure Code, therefore, it still applies which in Article 1 says that the news written report from experts who work for practical research institutes of natural science held or recognized by the government, has the strength of evidence in criminal cases, as long as it is made on a special oath referred to in Article 2 of the Stbl.[25]

In the context of expert testimony, the Criminal Procedure Code (KUHAP) does not explain what expert testimony means. According to Andi Hamza, expert testimony in the Criminal Procedure Code (KUHAP) does not explain what expert testimony means in Article 343 Ned. Sv. For example, it is defined as an expert's statement: "the opinion of an expert related to knowledge that has been studied (owned) by someone. The definition of science (wetenschap) was broadened by Herzien Inlandsch Reglement (HIR) to include criminalistics so that van Bemmelen, as quoted by Andi Hamzah, said that science of writing, weapons science, knowledge of fingerprints, and others are included in the understanding of science according to the meaning of Article 343 Ned. Sv. the. Therefore, as an expert, a person can be heard giving information regarding certain issues. According to the judge's opinion, that person knows specifically about that field.[26]

One of the roots of the problem related to expert testimony as a means of evidence in Indonesian criminal procedural law originates from the law itself, namely Law No. 8 of 1981 concerning the Criminal Procedure Code. According to law, expert testimony as legal evidence is only regulated in one article in Part Four, Chapter XVI as formulated in Article 186 of the Criminal Procedure Code (KUHAP), which reads: Expert testimony is what an expert states in court.

Likewise, with the norms governing the qualifications of experts. Article 1

[23] Andi Hamzah. *Hukum Acara Pidana Indonesia.edisi kedua*. Jakarta: Sinar Grafika, 2008, hlm. 273.
[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*

number (28) of the Criminal Procedure Code (KUHAP) only states that expert testimony is information given by a person with special expertise on matters needed to clarify a criminal case for examination purposes.[27]

This ambiguity then eventually led to another derivative problem, namely the need for more legal certainty related to expert testimony. Daily, more and more news is found related to various expert issues in criminal trials. This is certainly a matter of concern, considering that the goals and practices in the field are contradictory. Another bad impact is that the court and judge institutions are eroded, and their authority is lost, the walkout in the Habib Rizieq case is one example.

During the trial in the Munir murder case, although they did not directly examine Munir's body, the expert witnesses Ridlo Bakri and Budi Sampurno believed that Munir's death was caused by arsenic poisoning that entered the body through the food and drinks Munir ate. This belief arose because a Dutch forensic expert's making of a post-mortem et repertum technically complied with the standard requirements and procedures that apply internationally.[28]

4. Conclusion

Based on the results and analysis of the discussion above, the conclusion is first that the Public Prosecutor himself is assisted by the existence of expert testimony at the investigative level because it will look at the criminal events that will be prosecuted more completely and thoroughly. Second, no sanctions or consequences are found in the Perkap 6 of 2019 concerning Investigation of Criminal Acts when the investigation does not present experts 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 must be balanced with sanctions or consequences when investigators fail to present experts in their case.

Based on the conclusions above, the suggestions in this study are. First, investigators in each case title should be able to present experts to help find material truth. The provisions in the Chief of Police Regulation (PERKAP) Number 6 of 2019 concerning Investigation of Criminal Acts follow legal requirements both in accommodating 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 them to be obeyed. Second, investigators strive to implement case

[27] *Ibid.*

[28] "Ahli: Visum Munir di Belanda Sah". http://www.hukumonline.com/berita/baca/hol13884/ahlivisum-munir-di-belanda-sah

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 pre-trial lawsuits regarding the determination of the suspect. It is recommended that drafters of regulations include case titles in the Draft Criminal Procedure Code (RKUHAP) as a basic guideline in the criminal investigation process.

References

"*Habib Rizieq Walk Out Tolak Roy Suryo*", http://en.news.viva.co.id/news/read/1014-habib_rizieq_walk_out_tolak_roy_suryo, diakses tanggal 18 januari 2021.

"Kasus Asian Agri, Hakim Tolak Saksi Ahli dari Ditjen Pajak", http://www.tempo.co/read/news/2011/07/05/090344814/Kasus-Asian-Agri-Hakim-Tolak-Saksi-Ahli-dari-DitjenPajak, diakses tanggal 10 Januari 2021

"Saksi Ahli Ditolak Mejelis Hakim : Sidang Korupsi Jembatan Paluh Merbau".Harian Sumut Pos. http://www.hariansumutpos.com/arsip/?p=48685, diakses tanggal 2 Februari 2021.

"*Tolak Mendengar Saksi, Hakim Tipikor Dituding Langgar KUHAP*", http://www.hukumonline.com/berita/baca/hol16916/tolak-mendengar-saksi-hakim-tipikor-dituding-langgar-kuhap-. diakses tanggal 10 Januari 2021.

Ahmad Zaenal Fanani. "Berpikir Falsafati Dalam Putusan Hakim", 2011.Artikel ini pernah dimuat di Varia Peradilan No. 304 Maret, hlm 3.

Albertus Luter, Ramlani Lina Sinaulan, and Mohamad Ismed, "Pre-Trial: The Suspect' Ultimate Weapon and Correction Tool for Investigators To Be More Professional From The Perspective Of Legal Expediency," *Policy, Law, Notary and Regulatory Issues (POLRI)* Volume 1 ISSUE 2, April 2022.

Ari Trestiawan, Bambang Sugiri, and Prija Djatmika, "Progressive Legal Perspective of the Settlement Child Criminal Action as a Narcotics User in the Malang City Police Resort," *International Journal of Multicultural and Multireligious Understanding* Volume 8, Issue 4, April 2021.

Arief, Barda Nawawi, *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*. Kencana Prenada Group, Jakarta, 2010

Hamzah, Andi, *Hukum Acara Pidana Indonesia.edisi kedua*. Sinar Grafika, Jakarta, 2008

Harahap, M. Yahya, *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan,* Sinar Grafika, Jakarta, 2009.

Kitab Undang-Undang Hukum Acara Pidana

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Masrizal Afrialdo, "Pelaksanaan Penyelidikan dan Penyidikan Perkara Pidana

oleh Kepolisian Terhadap Laporan Masyarakat di Polisi Sektor Lima Puluh", JOM Fakultas Hukum Volume III Nomor 2, Oktober 2016.

Mertokusumo, Sudikno, *Hukum Acara Perdata Indonesia*. Edisi 7 Cetakan 1, Liberty, Yogyakarta, 2009

Mulyadi M. Umanailo, "Penyidikan Dalam Penanganan Tindak Pidana Umum Menurut KUHAP", *Jurnal Lex Privatum* Vol. IV No. 6, Juli 2016

Nur Agus Susanto. "Dimensi Aksiologis Dari Putusan Kasus "ST" Kajian Putusan Peninjauan Kembali Nomor 97 PK/Pid.Sus/2012, 2014". *Jurnal Yudisial*. No. 3. Vol.7. Desember 2014

Pangaribuan, Luhut M.P., *Hukum Acara Pidana Surat-Surat Resmi di Pengadilan oleh Advokat,* Cetakan Kedua, Papas Sinar Sinanti, Jakarta, 2013

Peraturan Kapolri Nomor 6 Tahun 2019 tentang Penyidikan Tindak Pidana

Prakoso, Djoko, *Upaya Hukum Yang Diatur Didalam KUHAP*, Cetakan Pertama, Aksara Persada Indonesia, Jakarta, 1987.

Rafiqa Qurrata A'yun. Kualifikasi dan Objektivitas Ahli Dalam Pemeriksaan Perkara Pidana*, Thesis,* Universitas Indonesia. Jakarta, 2010.

Soeparmono, R., *Keterangan Ahli dan Visum Et Repertum dalam Aspek Hukum Acara Pidana*. Satya Wacana, Semarang, 2002

Soesilo, R.. *Hukum Acara Pidana (prosedur penyelesaian perkara pidana menurut KUHAP bagi penegak hukum).* Cetakan Pertama, PT. Karya Nusantara, Bandung, 1982.

Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Republik Indonesia.