



Legal reconstruction of homicide crime scene reconstruction based on justice value

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Abstract

The purpose of this study is to analyze the weaknesses of the regulation on the reconstruction of the homicide scene and how to reconstruct it based on justice value in a qualitative type of research. The approach method in this research is socio-legal-research research. The legal theory used as an analytical knife includes the grand theory of justice theory, the middle theory of legal system theory, and the Applied Theory, which is the legal protection theory.

The results of the study show that the regulation on the reconstruction of the homicide scene was not based on the value of justice because there were no strict norms governing the existence of the reconstruction itself. So far, the Criminal Procedure Code as the main body of criminal procedural law in Indonesia has only focused on regulating evidence in court, while the evidence available before the court has not been regulated in detail. Reconstruction is carried out before the case enters trial, however, in an urgent sense, reconstruction is very useful for evidence and is beneficial for the parties involved in criminal trials, especially the suspects and victims. The current weaknesses in the regulation of the reconstruction of the homicide case are that there are no strict norms governing whether or not it is mandatory to conduct the reconstruction. Reconstruction is very useful for parties involved in proving a crime, for example for a suspect, in this case, the suspect will be able to provide his true position in the occurrence of a crime involving the loss of life which is not included in the Case-Filling Report at the investigation stage. Then from the side of the victim's family, their presence either represented by their legal counsel will add to the strength of the aspect of supervision of the implementation of the reconstruction, thereby reducing or even avoiding the abuse of authority that can be carried out by law enforcers. therefore, the Legal Reconstruction of the homicide scene reconstruction based on the values of justice is done by adding a special provision in the Criminal Procedure Code that the reconstruction of the crime of scene must be included in the Criminal Procedure Code as a form of the value of justice for all parties involved in the trial of a criminal case.

Keywords: legal reconstruction, homicide, crime scene, justice value

Introduction

In Order to be able to declare someone committing a criminal act, it must be proven first that the defendant committed the act and had malicious intent to commit the act (Purnama, 2018) ^[4]. Examination of criminal acts at court hearings is one of the stages in enforcing criminal law, namely the real application of material criminal law in people's lives. This stage begins with the submission of indictments by the public prosecutor to the imposition of a decision by a judge in court. One of the stages that must be carried out by a judge when examining a criminal act in court is the stage of proof as a means to determine whether the defendant is guilty or not. The purpose of criminal procedural law is to achieve material truth, namely the complete truth. In order for this goal to be achieved, the criminal act that occurred must be explored to its roots based on valid evidence presented at the trial court. By achieving this material truth, the value of substantial justice is realized in the enforcement of criminal law. It can be said that the verification stage is a means to achieve the objectives of criminal procedural law in the form of material truth (Widodo, 2018).

The development of computer technology quickly and rapidly produces the internet which is in the process of being examined in a criminal court, it is very important to present evidence, because a person is declared guilty or not depending on the evidence presented at the trial. So in this regard, the precautionary principle is very important to

apply in assessing evidence. Material Criminal Law and Formal Criminal Law, can be interpreted that the position of Material Criminal Law regulates what prohibitions may not be carried out as an offense that can be subject to liability for criminal sanctions, while the position of Formal Criminal Law as a protector of the existence of material criminal law.

As contained in the Guidelines for the Implementation of the Criminal Procedure Code issued by the Minister of Justice states that: "*The purpose of the criminal procedure law is to seek and obtain or at least approach the material truth, namely the complete truth of a criminal case by applying the provisions criminal procedural law in an honest and appropriate manner with the aim of finding out who the perpetrators can be charged with committing a violation of the law, and then requesting an examination and decision from the court to find out whether it is proven that a crime has been committed and whether the accused person can be blamed.*"

The determination of whether someone is guilty or not is determined by evidence. If the evidence presented before the court is not sufficient to prove a person's guilt then he will escape punishment, but this will reverse if the evidence presented is capable of proving the person guilty and must be sentenced according to the applicable law. There are 2 (two) words that show the meaning of evidence in a foreign language, namely evidence, and proof. Evidence is defined as "*information collected in order to become supporting*

data that can ensure that the facts are true", while proof refers to "the results of an evaluation process". (Shtefan, 2020) [5]

Based on Article 184 of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) regarding the information on the evidence, states that "*the evidence is in the form of witness statements, expert statements, letters, instructions and statements of the accused.*" In the provisions of the article, it has been limitedly determined that the evidence is capable of providing evidence of guilt against the defendant before the court, because outside of this evidence cannot be justified as evidence by the head judge at trial, the public prosecutor, the accused and legal advisors who are proven, one of which is by way of Case Reconstruction.

In simple terms, the process of reconstructing a case is a process of demonstrating a criminal act in order to clarify the course from the beginning to the end of a crime based on information obtained from witnesses and suspects. This process is important to show the correlation between evidence and testimony, however, the provisions regarding the reconstitution of cases are not regulated in the Criminal Procedure Code.

It is not mandatory to carry out re-enactment in a criminal case where a person's life has been lost, causing problems that can be said to be serious because the provisions of Article 184 (1) of the Criminal Procedure Code regarding evidence state that there is evidence of guidance. The guiding evidence here, when referring to Article 188 of the Criminal Procedure Code, explains that there is a conformity in the evidence found by the judge at the trial, therefore by comparing it to the above provisions with the reconstruction in the case of the crime of loss of life, it is clear that this reconstruction of homicide scene process is urgently needed. However, what happened in this reconstruction is not a mandatory agenda in the investigation, this is a legal issue that needs to be reconstructed at the normal level.

If this reckoning in the case of the crime of loss of life is required to be carried out by investigators, then there will be several positive impacts, including it will be easier for the public prosecutor to prove a criminal incident in the trial, and for the judge, it will be easier for the judge to make a decision based on the evidence presented by the public prosecutor which The evidence gave rise to the judge's conviction that there had been no crime and the defendant was the perpetrator of the crime. Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Homicide Crime Scene Reconstruction Based On Justice Value*" where the main problem discussed in this article is as follows:

1. What are the current weaknesses in the regulation of Homicide Scene Reconstruction?
2. How is the legal reconstruction of the Homicide Scene Reconstruction based on the value of justice?

Method of research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) [7].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) [1]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research result and discussion

1. The current weaknesses in the regulation of homicide scene reconstruction

In proving the crime and guilt of the defendant, the judge does not only rely on the evidence specified in the law. The judge has a subjective assessment of the defendant through a conviction based on evidence determined by law. So in determining the guilt of the defendant or issuing a decision, the judge will rely on the evidence determined by the law and his convictions to determine whether the defendant is guilty or not.

In the National Criminal Procedure Code, which contains the *Aquisator* principle, namely the examination of suspects is no longer the object of examination, namely in Article 18 of Law Number 14 of 1970 it is stated that "*everyone who is suspected, arrested, detained, prosecuted and/or before a court, must be presumed innocent before a court decision is made, which states the guilt and obtains permanent legal force.*"

Based on this principle of presumption of innocence, every person since he or she is suspected of having committed a certain crime until he receives a decision that has definite legal force from a court judge still has his individual rights as a citizen (Wahyu, 2019) [10]. With these individual rights, they can be submitted by themselves to the authorities for immediate examination by investigators (not allowed to drag on for reasons of many tasks). In the General Elucidation of the Criminal Procedure Code, in point 3 it is said, among other things, that this law which regulates the national criminal procedure law, must be based on the

philosophy/view of the life of the nation and the basis of the state, so it should be in the material provisions of articles or paragraphs that protection of rights should be reflected. human rights. The era of the Criminal Procedure Code can indeed be said to be an era where attempts were made to provide more appropriate protection and recognition of human rights, in this case, the human rights of suspects and defendants. Therefore, in the General Explanation section, it is further stated that the principles governing the protection of the nobility of human dignity which has been laid down in the law concerning the Main Provisions of Judicial Power must be upheld in and with this law.

Efforts to better enforce and protect the human rights of suspects/defendants should not only be limited to the provisions of the Criminal Procedure Code, but also all other laws and regulations that are related to criminal procedural law. As one of the principles which, according to the General Elucidation of the Criminal Procedure Code, needs to be upheld is the principle that every person who is suspected, arrested, detained, prosecuted, and/or presented before a court hearing, must be presumed innocent until a court decision states his guilt and obtains permanent legal force. This principle is known as the presumption of innocence. This principle of presumption of innocence at least requires that everyone be treated as befits someone who is innocent (Stevens, 2009)^[6].

The facts of violation of the rights of a fair trial which have an impact on problematic evidence often make the case construction incomplete and less convincing and fail to strengthen the role of the defendants in the alleged crime so that they deserve the death penalty. The provisions regarding evidence and decisions in the Criminal Procedure Code are indeed designed to ensure that there is a criminal imposition with a standard beyond a reasonable doubt, but it is not sufficient enough to ensure that the death penalty, namely the imposition of a sentence, must be accompanied by clear and convincing evidence that leaves no gaps for alternative explanations. on the existing facts (clear and convincing evidence leaving no room for an alternative explanation of the facts). The proving process that occurs in death penalty cases shows the weak application of the principle of equality of arms, as an important principle in a fair trial which ensures that defense in criminal justice processes is procedurally equal.

According to the theory of proof, in the investigation stage, investigators only have powers that are not as flexible as judges at trial. If this is related to the investigator's task of explaining a crime, the function of the expert's testimony is only to strengthen the investigator in his task of explaining a crime.

If it is in accordance with other facts at trial, then the expert's statement is taken as the opinion of the judge himself. If the expert's testimony is contradictory, the judge may rule it out. However, it should be remembered that if an expert's statement is set aside, it must be based on clear reasons, it cannot simply be ruled out without reason. Because the judge still has the authority to ask for re-examination if necessary.

2. Legal reconstruction of the homicide scene reconstruction based on the value of justice

In Relation to the case of murder, a very serious crime that gets enough attention in society. News in print and electronic media has often reported the occurrence of

murders. The crime of murder is known from time to time, and due to various factors. In this modern era, the crime of murder is even more prevalent. The crime of murder based on history has existed for a long time, or it can be said as a classic crime that will always follow the development of human culture itself.

A criminal act is an unlawful act in the form of a crime or violation that is punishable by imprisonment, confinement, or a fine. The perpetrators of this crime will be subject to sanctions in the regulations that apply in Indonesia, which we know as criminal law. This criminal law is divided into two namely general criminal law rules which are regulated in the Criminal Code (KUHP), whose implementation is regulated in the Criminal Procedure Code (KUHP), and special criminal law rules which are regulated in the Criminal Procedure Code. Special Law based on the type of crime.

The Criminal Code (KUHP) regulates various types of crimes, one of which is the crime of murder contained in the Book II of the Indonesian Criminal Code Chapter XIX concerning Crimes Against Life from Article 338 to Article 350. Murder as referred to in Article 338 of the Criminal Code is an act of the crime of depriving the life of another person with the following elements:

- a. Deliberately killing someone;
- b. There is a form of action;
- c. There is another person's death; and
- d. There is a causal relationship between the actions committed and the consequences of death.

Article 340 of the Criminal Code clearly regulates the crime of premeditated murder which reads as follows "*Whoever deliberately and with premeditation takes the lives of other people, is punished for premeditated murder, with the death penalty or life imprisonment or temporary imprisonment for twenty years.*"

Cases of homicide are often found everywhere, both in print and electronic media, the perpetrators of this crime are increasingly varied and many are trying to erase the traces that they were the perpetrators of the crime of murder. The police whose duty is to uncover this crime must work optimally for investigations and investigations in uncovering who the perpetrators of these crimes are.

There are various kinds of techniques in investigations carried out by the police, one of these techniques is reconstruction or re-creation. This reconstruction or reconstruction is not strictly regulated in the law but in CHAPTER III Minutes of Article 75 paragraph (1) letter a. Examination of suspects; letter h examination of witnesses; and the letter k. Implementation of other actions in accordance with the provisions of this law. The Criminal Procedure Code clearly regulates the Minutes that can be used by investigators to carry out reconstruction.

Generally, reconstruction is carried out for criminal acts that result in loss of life, such as in cases of murder or also in cases of serious maltreatment and this reconstruction is usually carried out at the crime scene (TKP) or in other places if the crime scene (TKP) is deemed unsafe or inappropriate. to carry out the reconstruction. This reconstruction is necessary because, as we know, there is a long time span for examining cases at trial, so this reconstruction can help law enforcement to obtain an overview of cases that occurred in the past, as one of the easiest ways to obtain an overview of how a person or

several the suspect commits a crime against the victim. Guidelines for the implementation of the Criminal Procedure Code explained, that the purpose of the criminal procedure law is to seek and obtain or at least approach the material truth, namely the complete truth of a criminal case by applying the provisions of the criminal procedure law in an honest and appropriate manner, with the aim of finding out who is the perpetrator who can be charged with committing a violation of the law, and then requesting an examination and decision from the court to find out whether it is proven that a crime has been committed and whether the person charged with this can be blamed (Toebagus, 2022)^[8]. The main tasks of the criminal procedural law are to mutually support each other, because to carry out a judge's decision, of course, the decision issued by the judge must truly reflect the justice of the criminal event that occurred, and to achieve that justice, law enforcement officials must look for strong evidence that reflects the real truth of a crime.

Reconstruction of criminal cases as a technique used by the apparatus in the investigation process is indeed not regulated explicitly or openly in the Criminal Procedure Code, the investigative process in the Criminal Procedure Code only regulates general matters which includes the authority of investigators as in Article 7 letter e which states that investigators can carry out examinations regarding examinations carried out by investigators, Article 112 of the Criminal Procedure Code gives authority to investigators to be able to summon suspects as well as witnesses deemed necessary for examination by issuing valid summons first. Furthermore, Article 117 of the Criminal Procedure Code states that the testimony of a suspect or witness to investigators is given without pressure from anyone or in any form. However, regarding what actions the investigator took during the examination process, there is no detailed regulation in the Criminal Procedure Code, including the technique of examination carried out by the investigator. Arrangements for the reconstruction of criminal cases carried out during the investigation process in the Criminal Procedure Code are further elaborated through Article 75 paragraph (1) letter a, letter h, letter k, paragraph (2), and paragraph (3) which implicitly or impliedly exist regulates the minutes that can be used by investigators to carry out reconstruction, which reads: "Article 75 paragraph (1). Minutes are made for each action regarding:

- a. Examination of suspects;
- b. Examination of witnesses; and
- c. Implementation of other actions in accordance with the provisions of this law.

In this case, the implementation of the other actions referred to in Article 75 paragraph (1) letter k of the Criminal Procedure Code above includes reconstruction carried out by the investigator. Article 75 (2). The official report is made by the official concerned in carrying out the activities referred to in paragraph (1) and is made on the strength of the oath of office.

Regarding the place where the reconstruction of criminal cases is carried out, according to the decision letter of the head police of Indonesia, this can be done at the scene of the case (TKP), namely the place where a crime was committed/occurred, or the consequences it caused or other places where evidence or victims related with the crime can be found. However, in general, any place where a crime is

suspected to have occurred should be considered the scene of the crime.

According to Lamintang (2013)^[3], the place of occurrence of a case is a place where a crime has been committed, whereas in the Criminal Procedure Code, the term TKP (Case Incident) is not recognized but the term first action is used at the "*scene of incident*".

(Article 7 paragraph (1) letter b of the Criminal Procedure Code), while what is meant by taking the first action at the scene is taking all kinds of actions deemed necessary by the investigator:

- a. Save the victim's life;
- b. Arrest the perpetrators of these crimes who are still within the reach of investigators to be arrested immediately;
- c. Closing the scene of the incident for anyone whose presence there is not necessary to save the victim, to save people's assets, or for the purposes of investigation and investigation with the intention that the scene of the incident remains in its original condition to facilitate investigation or investigation;
- d. Finding, saving, collecting, and taking evidence and traces that can help investigators to get clues about the identity of the perpetrators, about the methods and tools that have been used by the perpetrators, and to weaken an alibi that might be put forward by a suspect if then caught; and
- e. Finding witnesses who are expected to help investigators to solve the problem at hand, and separating the witnesses so they cannot talk to one another.

At first, before the issuance of the Basic Police and Attorney Laws in 1961 (Law No. 13 of 1961 and Law No. 15 of 1961), the term "investigation" was commonly used as a guideline for the Dutch term *opsparing*, and the English term investigation. But with the introduction of a new term by the two laws, namely "*investigation*" with the same meaning as mentioned above, since then the term "*investigation*" which is usually used by HIR translators has disappeared to mean RIB to mean Dutch in HIR, namely the *opsparing*.

The Criminal Procedure Code (KUHAP) itself defines investigation as a series of investigative actions in terms of and according to the methods stipulated in this law to seek and collect evidence which with that evidence makes it clear about the crime that occurred and to find the suspect.

Then In the act of follow-up investigation, the emphasis is placed on the act of '*looking for*' and '*finding*' an '*event*' which is considered or suspected of being a crime. In investigations, the emphasis is placed on the act of '*looking for and collecting evidence*' so that the crimes found can become clear, and in order to find and determine the perpetrators. From this explanation, there is almost no difference in the meaning of the two is only gradual. Between investigation and follow-up investigation are two phases of action that have the form of one between the two are interrelated and the contents in order to complete the examination of a criminal event (Fuady, 2006)^[2].

The investigation begins when the investigator uses investigative authority that is directly related to the suspect's rights, such as using forced arrest. When using such forceful measures, the investigator's obligation arises to notify the public prosecutor of the commencement of an investigation into a crime.

An investigation can be said to have started when the investigator has used his authority which is directly related to the suspect's human rights, in this case, what is meant is the use of the investigator's authority to detain the suspect. This is explained in the Additional Guidelines for Implementation of the Criminal Procedure Code (Attachment to the Decree of the Minister of Justice of the Republic of Indonesia No. M. 14-PW.07.03 of the Year 1983) in point 3 which explains as follows: the investigator has carried out coercive measures, such as summons for prosecution, arrest, detention, examination, confiscation and so on. An investigation into a crime is a process consisting of a series of actions carried out by an investigator to make it clear that a crime has been committed and find the perpetrators of the crime. The process of being able to know with certainty and precisely the circumstances of a crime that occurred is to carry out a reconstruction, this can include all the events that occurred during that time and from a study of the evidence that has been found. So in certain ways, this can make it possible for investigators to draw useful conclusions which are ultimately combined with the theories made before.

From all the investigations that have been carried out, a final conclusion can be drawn about the events that occurred. And with the reconstruction carried out, it will be clear how far the role played by the suspect in a criminal event is. The implementation of reconstruction is urgently needed, especially in analyzing the statements of suspects or witnesses, according to the story, and whether they took actions consistent with the existing facts.

Reconstruction of arrangements regarding the re-creation of the criminal act of killing another person must be clearly stated in the Criminal Procedure Code, in order to guarantee legal certainty for the parties involved in proving the crime of killing another person as so far, reconstructing has only been used as a complement to facilitate proof in court therefore by reconstructing the law, the use of reconstruction on homicide case scene can finally be according to the value of justice.

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The current weaknesses in the regulation of homicide scene reconstruction are that there are no strict norms governing whether or not it is mandatory to conduct the reconstruction. Reconstruction is very useful for parties involved in proving a crime, for example for a suspect, in this case, the suspect will be able to provide his true position in the occurrence of a crime involving the loss of life which is not included in the Case-Filling Report at the investigation stage. Then from the side of the victim's family, their presence either represented by their legal counsel will add to the strength of the aspect of supervision of the implementation of the reconstruction, thereby reducing or even avoiding the abuse of authority that can be carried out by law enforcers.
2. Reconstruction of the regulation on the homicide scene reconstruction based on the values of justice is done by adding a special provision in the Criminal Procedure Code that the re-creation of the crime of killing other people must be included in the Criminal Procedure

Code as a form of the value of justice for all parties involved in the trial of a criminal case.

References

1. Faisal. *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, 2010, 56.
2. Fuady, Munir. *Teori Hukum Pembuktian (Pidana dan Perdata)*. Citra Aditya Bakti, Bandung, 2006.
3. Lamintang PAF. *Dasar-Dassar untuk Mempelajari Hukum Pidana yang Berlaku di Indonesia*. Fifth Edition, Citra Aditya Bakti, Bandung, 2013.
4. Purnama, Sidik. *Criminal Act Principles Policy Renewal of Criminal Act in Indonesia*. *Jurnal Daulat Hukum*, 2018;1:479. 10.30659/jdh.v1i2.3320.
5. Shtefan, Anna. *Evidence Law As The Element Of The Legal System*, 2020. *Theory and Practice of Intellectual Property*. 10.33731/32020.216559.
6. Stevens, Lonneke. *Presumption of Innocence and Article 5 of European Convention on Human Rights Does Not and Cannot Limits its Increasing Use*. *European Journal of Crime, Criminal Law and Criminal Justice*, 2009.
7. Toebagus Galang Windi Pratama. *The Urgency for Implementing Crytomnesia on Indonesian Copyright Law*, *Saudi Journal of Humanities and Social Sciences*, 2020;5(10):508-514. DOI:10.36348/sjhss.2020.v05i10.001
8. Toebagus Galang Windi Pratama. *Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan*, *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 2022, 4(1). DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>
9. Wahyu Widodo, Supto Budoyo, Toebagus Galang Windi Pratama. *The Role Of Law Politics On Creating Good Governance And Clean Governance For A Free-Corruption Indonesia In 2030*. *The Social Sciences*, 2018;13:1307-1311.
10. Wahyu Widodo, Toebagus Galang. *Poverty, Evictions And Development: Efforts To Build Social Welfare Through The Concept Of Welfare State In Indonesia*, *3rd International Conference On Globalization Of Law And Local Wisdom Icglow*, 2019. Dx.Doi.Org/10.2991/Icglow-19.2019.65.