



The power of polygraph results as evidence in trial

Agung Prasetya¹, Markoni², Nardiman²

¹ Student Master of law Study Program, Faculty of Law, Esa Unggul University, Jakarta, Indonesia

² Lecturer Master of law Study Program, Faculty of Law, Esa Unggul University, Jakarta, Indonesia

Abstract

The Polygraph/Lie Detector is what is often discussed lately because it involves examining big cases such as Joshua's shooting. Law enforcement is one of the main pillars in the country. In the concept of an integrated criminal justice system, the development of the legal apparatus is manifested through empowering the legal profession starting from investigators, public prosecutors, legal advisors, judges and correctional institutions, and judges as implementers of law enforcement in the judiciary. Knowing how the process of using polygraph results can be used as evidence in court and what the position of polygraph results is in the criminal evidence system is important when submitting polygraph results as evidence. Based on the Criminal Procedure Code, articles 183 and 183 regulate at least two pieces of evidence (witness statements, expert statements, letters, instructions, defendant's statements) so that judges can gain confidence when making legal decisions. With normative legal research and descriptive juridical explanations to describe and analyze actual problem objects through secondary legal materials. Polygraph settings are in Perkap No. 10 of 2009 and Perkaba no. 1 of 2022 and implement Work Instructions (IK), where after the polygraph examination is carried out, a Polygraph Examination BA is issued, and from the BA Examination and Oath investigator, the file is handed over to the prosecutor's office, once complete (P-21), the labfor team is invited to attend the trial, and in front of the judge will answer all questions related to the polygraph examination. The position of the polygraph results as evidence is attached to KUHP article 184 paragraph 1 as a letter for all Minutes that have been submitted, expert statements and instructions during the trial. The results of the polygraph as evidence at trial have been recorded in Supreme Court decisions which can be accessed online.

Keywords: Polygraph/Lie detector, integrated criminal justice system, online

Introduction

Polygraph or Lie Detector examinations have become frequently discussed news recently, especially in handling major cases that occurred in Indonesia. We can take several examples such as the shooting and murder case involving Two Star Police officer Ferdy Sambo against his aide, Brigadier Nofriansyah Yosua. Hutabarat or better known as Joshua, then underwent polygraph examinations on several people suspected of being involved in the case (Eka, 2022). Then we also heard news regarding the abuse carried out by Mario Dandy Satriyo against David Ozora, who also underwent a polygraph examination (Dzaky, 2023). This has become a question mark among experts regarding the polygraph examination, how it works, its accuracy and the use of polygraph results in trials. In Article 183 of the Criminal Procedure Code it has been stated "The judge may not impose a crime on a person unless he has at least two valid pieces of evidence. obtain confidence that a criminal act actually occurred and that the defendant is guilty of committing it." From the explanation of the article above, it is clear that evidence is the main factor when a judge finds a defendant guilty in a criminal case.

The word polygraph is taken from the words poly or many and graph or picture, writing, graph. This means that a polygraph is an image or graph that is displayed by a rolling paper which is then written in the form of graphs which mostly refer to the number of sensors installed or used on the body being examined. Linguistically, polygraph comes from Greek which means "many writings" and the underlying reason for a polygraph is that lying is associated with various physiological changes in the autonomic nervous system. The polygraph is not a lie detector in

essence, but is a measurement of the physiological increase that results from lying. More specifically, ongoing changes in respiratory, cardiac and electrodermal function are specifically recorded or noted and the results of these recordings are used to diagnose a person's honest possibilities (Gannon, 2008) ^[10].

In the United States, polygraph examinations are used for at least four purposes: (1) for investigations, (2) screening by law enforcement or national security agencies, (3) the process of screening workers, especially people who work in government, (4) for testing perpetrators of sexual harassment (Aldert, 2008) ^[11].

In its history and development, the polygraph emerged which was then used as a supporting tool in trial evidence which is supporting or balancing evidence for judges in imposing a crime. The beginning of the polygraph machine was created by James Mackenzie in 1902. Where the Lie detector was developed for circulation studies made by Cambridge and Paul Instruments from the British company number L-9335. In the United States lie detectors began to be used around the 1920s and the polygraph test (a test for detecting lies) was developed, after John Larson, a police officer for the Berkeley area, California, United States, developed an instrument for detecting lies. In subsequent developments, the polygraph examination method became more developed by adding the Control Questions method which was developed by John Reid in 1947 (Synnott, 2015) ^[13].

In Indonesia, based on search results on the Supreme Court website directory, it was found that the use of polygraphs in trials is still not commonly used, only in early 2016 until now the use of polygraphs as part of evidence in trials began

to be used because polygraph experts were competent in carrying out polygraph examinations. It has started to become widespread among the police, especially in forensic laboratories. The use of polygraph examination results can be found through tracing several judge's decisions, most recently in the trial of the shooting case of Brigadier Yosua Hutabarat in 2023 by Ferdy Sambo.

The lack of directories related to polygraphs indicates that the use of polygraphs is still very limited because not all judges use polygraphs as evidence to strengthen judges' beliefs because before 2016 polygraph experts were still very limited and there was a lack of socialization by forensic laboratories to police investigators, prosecutors and judicial institutions. The description of the function of the polygraph and the process of using it is very interesting. This is because this tool will make it easier to find out what actually happened or the legal problem that occurred and then find a solution that is closest to justice and goodness for all parties. However, of course you also have to pay attention to issues related to the accuracy of this tool, which is also known as a lie detector.

Based on searches of international journals related to research on polygraphs, the results of lie detector tests using polygraphs have an accuracy rate of above 93% for the UTAH-ZCT method. Meanwhile, the remaining 7% of the results will depend on the examiner's skill in carrying out the test. This test is carried out in three stages, namely pre-test (pre-test), test (test), and post-test (post-test). The examinee will be fitted with equipment with 4 sensors, namely chest breathing and abdominal breathing sensors, electrodermal (electrical resistance properties of the skin), and cardiovascular (blood pressure) sensors (Shinta, 2022).

If the polygraph examination process is carried out in accordance with standard procedures from ASTM and APA (American Polygraph Association), its use will be very important for uncovering criminal cases, shedding light on a case, providing new insights for investigators in uncovering a case at both the investigation (alleged) stage. criminal incident) and investigation (searching for and collecting evidence).

Based on the urgency in the field of investigation in Indonesia, one example is the case of a crime report from the North Jakarta Police in 2020 regarding the murder and shooting of a shipping boss in the name of Sugianto, where investigators had difficulty in uncovering the murder case, but with the help of a polygraph examination, It was found that the mastermind of the murder was Sugianto's own employee, namely Nur Luthfiah bint Nur Ghozali, and this case has been decided with a sentence of 20 years (Rosana, 2020).

In practice, polygraphs are regulated in the Regulation of the Chief of the National Police of the Republic of Indonesia Number 10 of 2009 concerning Procedures and Requirements for Requests for Criminalistic Technical Examination of Case Incidents and Criminalistic Evidence Laboratories to the Forensic Laboratory of the State Police of the Republic of Indonesia and Perkaba Number 1 of 2022. Regulation of the Chief of Police and The Head of Bareskrim's regulation makes polygraphs part of the evidence that can be examined in a forensic laboratory, where the formal and technical requirements for polygraph examination of suspects or witnesses are regulated.

However, polygraph examinations can cause irregularities, namely false negative errors and false positive errors when

the polygraph results are obtained. However, according to Raymon Nelson (2015) ^[14], this deviation occurs based on information from the APA (American Polygraph Association), empirically due to deviations from validated test protocols which allow for a decrease in the expected test accuracy and of course each examinee will have a different way of handling it, meaning Here the role and competence of the examiner is really needed as a polygraph examiner to support and guarantee the authenticity of the polygraph results so that influences that can reduce accuracy can be overcome.

Raymon Nelson (2015) ^[14] further said that false positives can be identified and corrected by carrying out additional testing and investigations, whereas identification of false negatives is sometimes impossible until a problem escalates to a level that can sometimes permanently affect an individual's life and future. However, it is important to remember that no polygraph test results or test results in any form other than a polygraph must be used independently as a basis for decision making by the Judge (Raymon, 2015) ^[14] when in court.

Based on this background, the problem is formulated as follows:

1. How can the process of using polygraph results be used as evidence at trial?
2. What is the position of polygraph results in the criminal evidence system?

The aim of this research is to find out the process of using the results polygraph can be used as evidence at trial. And know the position of polygraph results in the criminal evidence system.

Research methods

The type of research used in this research is normative legal research, namely looking for principles, doctrines and sources of law in a juridical philosophical sense (Marzuki, 2005). Study law Normative is legal research that places law as a building system of norms. The norm system in question is about principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). Nature of research Which used in this research is juridical descriptive in nature, meaning it is intended to provide as accurate data as possible about the situation and other symptoms. In accordance with the object of study, namely legal norms, this research is based on the availability of secondary legal materials.

In normative research, the collection of legal materials is carried out by literature study (document study). This technique is a way of collecting legal materials by reading, studying, studying and analyzing and making notes from literature books, statutory regulations, documents and other things related to the problem under study, namely regarding the data collection techniques used in this research.

Legal materials obtained by inventorying and reviewing research from literature studies, statutory regulations and documents relating to problems, which can help interpret norms to answer the problems studied in this research are then correlated with several principles and principles. The theory is the basis or analytical tool in writing this research as a step to find conclusions, solutions and ideal conceptions about the things being discussed. In normative legal research, the data analysis method used is to systematize written legal materials.

By analyzing data in the form of statutory regulations in a qualitative deductive manner, namely drawing the relationship between two general concepts and ending in a specific conclusion which is carried out using In normative legal research, the data analysis method used is to systematize written legal materials. By analyzing data in the form of statutory regulations in a qualitative deductive manner, namely drawing a relationship between two general concepts and ending in a specific conclusion which is carried out by explaining in detail, clearly and in detail a legal problem.

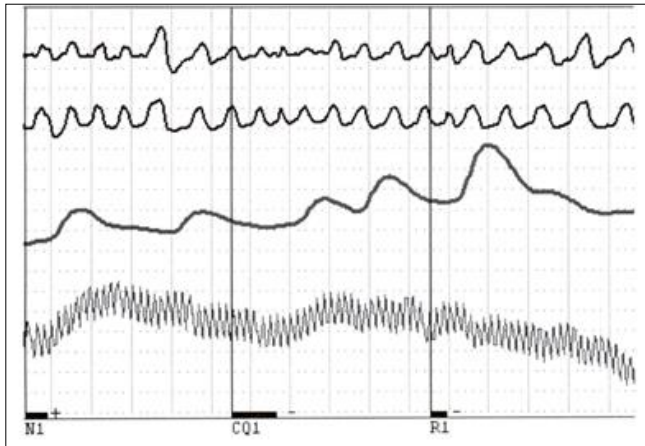


Fig 1

Research Results and Discussion

Polygraph Concept

According to Synnott, *et al.* (2015) ^[13], The polygraph is designed for lie detection tests using a suitcase-sized machine, measuring physical signals from the subject and recording these signals using multiple recording pens on a rolling graph paper. Now these machines are digitized using a computer or laptop (portable computer) instead of rolled graph paper to record the physical signals. Sensors are attached to the subject's body (1) two inflatable bands are placed around the chest and abdomen to measure breathing, (2) two electrodes are attached to the inside of the fingers (palms) to measure sweat on the hands (3) an inflatable cuff is positioned around the upper arm for record blood pressure. Graphic image of computer recording of physiological signals during the test.

Physiological parameters recorded with a polygraph vary with a number of psychological processes, including emotional ones such as fear and stress. Although it is widely accepted that there is no unique physiological pattern associated with lying (Synnott *et al.*, 2015; Lykken, 1998) ^[13], the graphic traces formed can still be used to infer lying or honesty.

In ASTM E2062-00 (ASTM E2062, 2000; By-Laws APA, 2015; Work Instructions, 2023) concerning reference standards for practical standards for polygraph inspection (PDD) strictly explains that there are three stages in the polygraph examination process including:

1. Pre-Test

The examiner conducts interviews to obtain sufficient information to identify the examinee, carry out a good rapport and ask for the examinee's consent to carry out the examination. The purpose of the interview is to give the examinee an understanding of the polygraph examination

and to gather information regarding personal background and the background of the case that occurred. The examiner must conduct a polygraph examination objectively. At this stage the examiner develops questions that will be given to the examinee regarding the problem that occurred.

2. Test

At this stage the examiner must use a test technique that has been validated according to APA (American Polygraph Association) standards where research has been carried out related to this method, the journal of which has been published and has been replicated by other researchers and has been applied by polygraph examiners many times to obtain accuracy value, and for evidence in trials the allowable accuracy is above 90% (Shaw, 2013; Krapohl, 2006). Before carrying out a polygraph test, the examiner will carry out an acquaintance test first for all types of tests applied. All questions that will be tested later must be reviewed together with the examinee to give the examinee time to digest the questions that will be given so that there is no doubt about the questions and in answering them.

3. Post-Test

The examiner will process the tests that have been carried out by analyzing them. The evaluation includes all inspection processes starting from the pre-test, test and post-test. Evaluation of the test is carried out by analyzing the graphs obtained and the examiner carries out graphic analysis using a validated analysis method (for example ESS (Empirical Scoring System, UTAH Scoring System, etc.). The examiner's notes in evaluating the test must be clear and precise enough so that other examiners carry out quality control can read it. After the inspection, the examinee will return it to the investigator.

The use of the polygraph in the United States shows that this tool is considered quite effective in assisting the investigation, selection and supervision process in various fields related to national security and interests. Even in some circumstances polygraph test results are accepted in several courts with several requirements (Udashen *et al.*: 2003) ^[11].

The process of using polygraph results can be used as evidence in court

The process of using the Polygraph cannot be separated from the role and duties of the Forensic Laboratory (Labfor) which is tasked with developing and carrying out the function of the Forensic/Criminalistics Laboratory in order to support investigations carried out by regional units with division of service areas (service areas) as determined by the National Police Decree.

Investigations carried out relate to places or events when a criminal act has been committed or has occurred where the suspect or victim or evidence related to the crime is found. For this reason, criminalistic laboratory examination of evidence is the function of examining evidence obtained from search, retrieval, confiscation, security and delivery of police officers or other law enforcement agencies, which carried out using scientific methods at the National Police Laboratory, so that the evidence that has been examined can be used as valid evidence. The use of the Polygraph is a task carried out by the Forensic Physics Laboratory, where criminalistic technical examinations of crime scenes and criminalistic laboratory examinations of

evidence use physical science and technology as the main method/instrument. Formal requirements that must be fulfilled by investigators include: written request, police report, BAP (Investigation Report) of the witness/suspect or progress report, letter of consent to be questioned from the witness/suspect who will be examined (examined), if the witness/suspect is accompanied by a legal advisor then letter of consent acknowledged by the legal advisor, letter of post mortem et repertum results if there is a victim.

The condition of the person being examined must be an adult according to the provisions of the law, physically and mentally healthy, if the woman being examined is not pregnant and/or menstruating and the condition of the person being examined is not in a state of depression (proven by carrying out a Num StimTest - the initial test before the polygraph test is carried out). To ensure the health of the examinee, it can be supplemented with the health history of the witness/suspect (examined) or a report on the results of a psychological examination.

After the investigator has made the request and it has been approved by Labfor, the examination team will coordinate with the investigator to discuss the facts of the case that

occurred. If necessary for the purpose of the examination, the examiner can visit the crime scene accompanied by the investigator. If the case is suitable for a polygraph examination, the examination team will prepare examination facilities. The examination can be carried out at the facility (labfor) or outside the facility in accordance with standardized examination technical requirements.

After a polygraph examination is carried out, the polygraph examination team will carry out an analysis process on the polygraph test that has been carried out and then obtain results and conclusions. From the results and conclusions obtained by the polygraph examination team, they can issue a product in the form of a Polygraph Examination Minutes, then the investigator will conduct an interview with the examiner who will then issue an Expert Examination Minutes and Oath Minutes.

The official report that has been issued will be handed over to the prosecutor's office, and once it is declared complete (P-21), the prosecutor's office will invite a polygraph examiner via an Expert Summons Letter to ask for expert testimony at trial.

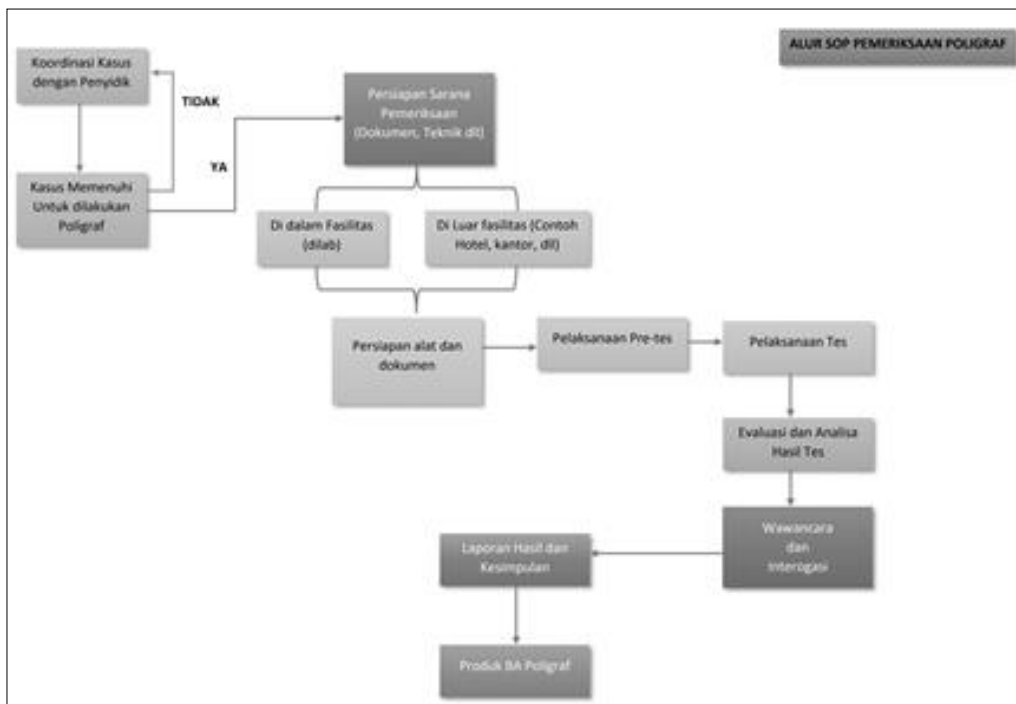


Fig 2: Picture of the flow of the request process to the polygraph results.

The Position of Polygraph Results in Criminal Evidence

In the KBBI online dictionary, the meaning of position is location or place or position. The position of the polygraph results in the criminal evidence system means the place or position of the polygraph results in the criminal evidence system. The criminal evidence system is carried out at trial, where several pieces of evidence are presented with a minimum of 2 pieces of evidence in accordance with KUHAP 184 paragraph 1. For polygraphs there are several places or positions for polygraphs as evidence, namely as letters, expert statements and letter instructions as stated in KUHAP article 184 paragraph 1 letter c, made on an oath of office or confirmed by oath.

In a polygraph examination, after the examination has been completed and the results of the examination are obtained, two letters will be issued. The first is a letter made by an

expert polygraph examiner in the form of a Minutes of Polygraph Examination, where this letter is signed by the expert polygraph examiner or the authorized official is from the forensic laboratory. The second is a letter written by a police investigator. Letters written by a police investigator are made in the form of a Minutes of Investigation and Minutes of Oath.

To use a polygraph as expert testimony, the prosecutor's office will ask for the assistance of a polygraph expert to be present at the trial regarding the case in which a polygraph was carried out on him. The prosecutor's office will write to the forensic laboratory polygraph expert regarding the time and place of the trial.

Expert testimony as stated in KUHAP article 186 is what an expert states in court. When in court before a judge, the expert will speak according to his portion and duties

regarding the examination carried out on the defendant. In KUHAP article 188 paragraph 2 it is stated that instructions can only be obtained from witness statements, letters and statements from the defendant, which is why, in the evidence of guidance as in KUHAP article 188 paragraph 3 the role of the Judge is to assess the evidentiary strength of an indication in each particular situation. by a judge wisely and judiciously, after the judge has conducted an examination with great care and testimony based on conscience.

In terms of position, polygraph results have been accepted in almost all courts by judges when deciding a case at trial. And even though polygraph evidence can be included in documentary evidence when it is in the BAP by the investigator and BA for polygraph examination, expert statements and instructions, when at trial it only becomes one piece of evidence at trial. From searches carried out on the Supreme Court website with the keywords polygraph and with the keywords polygraph. Several uses of the polygraph as evidence in court were found:

1. Bekasi District Court decision number 53/Pid.Sus/2018/PN Bks, decision date March 22 2018, regarding the Narcotics and Psychotropics case with the defendant Neneng Nasibah.
2. PT Palu decision number 31/PID/2018/PT PAL, decision date 26 March 2018, regarding the murder case with the defendant Antonius Paliling.
3. Kutacane District Court decision number 16/Pid.B/2018/PN Ktn, decision date 4 June 2018, regarding the murder case with the defendant Haddin.
4. South Jakarta District Court decision number 51/Pid.B/2021/PN JKT.SEL, decision date 26 July 2021, regarding the Special Criminal case with the defendant Sahrul Karim and others.
5. Supreme Court decision number 1850 K/Pid/2006, decision 17 February 2009, defendant Rici Lusiyani, murder case.
6. Supreme Court decision number 1683 K/Pid/2011, dated 27 October 2011, defendant Edi Setiawan alias Bro, murder case.
7. Central Jakarta District Court decision number 111/Pid.Sus/TPK/2014/PN.Jkt.Pst, dated March 9 2015, and Supreme Court decision Number 209 PK/PID.SUS/2016, dated January 11 2017 with convicts Romi Herton and Masyito, corruption case.
8. Supreme Court Decision Number 2658 K/PID.SUS/2015, dated 24 February 2016, defendant Neil Bantleman alias Mr. B. – case of sexual abuse against JIS school children, continued from the South Jakarta District Court: 1236/Pid/Sus/2014/PN.JKT.SEL, at the District Court level he was found guilty, the Legal Counsel continued his appeal to the PT and was acquitted, then the Prosecutor made an appeal with the results rejected the results from the PT, then the PH carried out a PK with the results being rejected by the PK by the Supreme Court so that the inkracht was found guilty.
9. PT Pekanbaru decision number 231/PID.B/2016/PT.PBR, dated 27 October 2016 regarding the defendant Wardiaman Zebua Alias Ardin in the case of murder and rape.

Apart from direct searches on the Supreme Court website, searches were also carried out on the Google search engine

using keywords directly for defendants whose trials had been carried out, for example the defendant on behalf of Mario Dandy Satrio alias Dandy in the case of serious abuse of the victim David Ozora, this was due to the words The key "polygraph" only has 21 data and "polygraph" with 4 data on the Supreme Court website, so further search is needed using other media to get the latest data updates. Further searches use the method of matching examined data to examination data carried out at the National Police Forensic Laboratory Center via a search engine.

Conclusion

From the discussion that has been obtained from the study through this research, it can be concluded that when entering the process stage, the use of polygraph results is based on Perkap no. 10 of 2009 and Perkaba no. 1 of 2022, and detailed in the Work Instructions (IK). Where the function of Labfor is part of police investigations in handling crime scenes and evidence based on scientific evidence. The police investigator asks Labfor to carry out a polygraph on a case, then the polygraph team will carry out a polygraph test. Work Instructions, after the polygraph test is carried out, the Polygraph Examination Minutes (BA) are made in conjunction with the Investigation Minutes and the Oath Minutes from the investigator, the investigator then hands over the case files. to the prosecutor's office, after being declared complete (P-21), the prosecutor's office then makes an invitation letter to the labfor team to ask for expert testimony at the trial, in front of the judge the labfor team will provide information regarding the polygraph test that has been carried out

The position of the polygraph results as evidence is attached to KUHAP article 184 paragraph 1 where the position of the polygraph is as evidence of letters from BA Polygraph Examinations as well as BA Examinations and BA Oaths, evidence of expert testimony in front of the judge during the trial, and as evidence of instructions based on witness statements, letters and defendant statements as the basis for the judge's consideration in assessing the case in court. The use of polygraph results has been proven to be useful as evidence in trials to reveal cases that have colored various events in Indonesia as recorded in Supreme Court decisions which can be accessed online.

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