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The Existence of Psychological Results in the Proof of the Criminal Action of Murder

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Abstract

The purpose of this study is to explain the existence of psychological results in proving the crime of murder. This is important because in order to seek material truth in a criminal case, in addition to using the evidence specified in the law, a judge's conviction is required. This research is normative legal research, namely law is conceptualized as norms, rules, principles or dogmas. So that what is studied is the compatibility between legal principles and existing norms. The main data in this research is secondary data in the form of primary, secondary and tertiary legal materials.

The results of the research show that the criminal justice process requires information from witnesses, victims and suspects. In the concept of psychology, the witness' memory is very vulnerable to the events he experienced, causing information to become inaccurate. In this case, the power of psychological results is very significant in criminal cases to help provide input that will add to the judge's conviction whether it is the perpetrator who committed or did not commit the criminal act or is related to accountability (*mens rea*).

Keywords: Proof, Psychological Results, Criminal Cases

1. Introduction

Proof is an important stage in the trial process. The proving process will determine the guilt or innocence of a person being examined in a judicial examination. The definition of proof rests on the meaning of the word "prove". According to M. Yahya Harahap, evidence is in the form of provisions that contain outlines and guidelines on ways that are justified by law to prove the guilt of the accused.¹

Proof in the process of criminal cases is guided by the provisions of the Criminal Procedure Code (KUHP), which theoretically adheres to a negative statutory proof system. This has been strictly regulated in Article 183 which states that a judge may not declare a person guilty unless supported by at least two valid pieces of evidence and added to his conviction. This kind of proof system is called a "negative statutory proof system", in which a new defendant can be declared guilty if the guilt charged with him can be proven in a way and with valid evidence according to law and there is a judge's belief that the accused really guilty.

Negative proof according to law is a reflection of the existence of the presumption of innocence², that a person should be presumed innocent until proven guilty in a court of law.³ This legal principle is one of the principles in law enforcement mandated by the KUHP that the accused must be considered as a subject in a trial where the existence of human rights guaranteed by law must be acknowledged; not as an object of inspection. This is what is said the principle of legality in criminal procedural law.⁴

This is proven because the Criminal Procedure Code provides protection for human rights (HAM) for defendants in defending their interests in the trial court examination process. In addition, the court is the final estuary in an examination process in

¹ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, Edisi kedua, Sinar Grafika, Jakarta, 2003, hlm. 273.

² Look at the General Explanation of the Criminal Procedure Code, point 3 letter c, namely: "Every person who is suspected, arrested, detained, prosecuted and/or presented before a court hearing, must be presumed innocent until there is a court decision stating his guilt and obtaining permanent legal force."

³ M. Yahya Harahap, *Op. Cit.*, pg. 2.

⁴ Darwin, Dahlan, Suhaimi, Analisis Yuridis Putusan Praperadilan dalam Perspektif Sistem Peradilan Pidana, *Jurnal Mercatoria*, Vol. 12 No. 1 (2019), pp. 68-79, <https://ojs.uma.ac.id/index.php/mercatoria/article/download/2363/2164/7849>.

court, so that a certainty is obtained in the form of a judge's decision which determines whether a person is guilty or not guilty of the crime he is accused of.⁵

Based on the principle of the presumption of innocence, the defendant must be presumed innocent until a judge's decision has permanent legal force, meaning that because he is considered innocent, at the investigation level up to the examination process at the trial court the defendant can freely give information and can even provide statements that are denial (denial). As specified in Article 52 of the KUHAP⁶ and implicitly regulated in Article 14 paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR). Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) and ratified by Law Number 12 of 2005⁷, then it becomes a binding provision for the state to implement the contents of the international agreement.

The existence of the right of denial in the Criminal Procedure Code can be seen through the existence of Article 168 of the Criminal Procedure Code⁸, so that it can guarantee the existence of the defendant's right of refusal so that he is not presented as a witness because if the accused is presented as a witness then he does not have the right of refusal and the right to give information freely because when his capacity is as a witness the defendant is bound by an oath so he must give a statement honestly.

Legal evidence is regulated in Article 184 of the Criminal Procedure Code in the form of witness statements, expert statements, letters, instructions and statements of the accused. As evidence, there is a legal system that limits it, namely *the negative wettelijk system*.⁹ Negative proof *wettelijk bewijstheorie* which is often referred to as negative proof based on the law is proof in addition to using the evidence included in the law, it also uses the judge's conviction. The judge's conviction is limited to the evidence that has been determined by law.

This system of proof based on the law negatively combines the system of proof according to the law in a positive way and the system of evidence according to the judge's conviction, so that this system of proof is called multiple proof (*doubelen grondslag*) stelsel or *the negative theory*

wettelijk known as the theory of proof based on the law. Negatively (negative *wettelijk*).¹⁰

The use of evidence must be based on the hierarchy of evidence, which means the strength of the evidence is based on the sequence. This means that the evidence that was first mentioned is the main or perfect evidence.¹¹ The first piece of evidence is the strongest piece of evidence that will be used to prove the guilt of the Defendant coupled with the Judge's conviction in assessing the relationship between the pieces of evidence contained in the Criminal Procedure Code.

The material truth to be sought in criminal cases has placed witnesses as the main means of evidence as stated in Article 1 point 27 of the Criminal Procedure Code.¹² This was reinforced by M. Yahya Harahap who stated that almost all evidence in criminal cases always relies on examining witness statements.¹³ In addition, R. Soesiloberpen can say that what is meant by testimony is a statement before the Judge under oath, regarding matters regarding certain events that he heard, saw, and experienced himself.¹⁴ Furthermore, Sudikno stated that what is meant by testimony is the certainty given to the Judge at trial regarding events by means of verbal and personal notification by persons who are not prohibited or not permitted by law who are summoned in court.¹⁵

The paradigm in the process of investigation, prosecution and judges in making a decision until now still relies on evidence in accordance with Article 184 of the Criminal Procedure Code in trials, but of the 5 (five) pieces of evidence referred to the most important is the witness statement, even then the witness statement must have 2 (two) new people can be stated as witnesses, according to the expert scholar stated above. The reality is that in criminal cases such as murder cases, it is most difficult to prove if there is a lack of evidence such as evidence from witness statements, so that other quality evidence is needed.

The lack of evidence means that the investigation into a murder crime case cannot be brought to trial when only using directive evidence that is vulnerable to being rebutted in front of the trial by the Legal Counsel/Defender's

⁵ Suhaimi, Peran Penasihat Hukum Dalam Pemenuhan Hak Terdakwa Dalam Persidangan Online Di Era Covid-19, *Justitia: Jurnal Ilmu Hukum dan Humaniora*, Vol 8, No 3 (2021), pp. 255-263, <http://jurnal.um-tapsel.ac.id/index.php/Justitia/article/viewFile/2217/pdf>.

⁶ Look at the Article 52 of the Criminal Procedure Code which reads: "In order for an examination to achieve results that do not deviate from the truth, the suspect or defendant must be kept away from fear. Therefore, coercion or pressure must be prevented against suspects or defendants."

⁷ See Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights)

⁸ Look at the Article 168 of the Criminal Procedure Code. Unless otherwise stipulated in this law, testimony cannot be heard and can resign as a witness: a. blood relatives or friends in a straight line up or down to the third degree of the accused or co-defendant; b. relatives of the accused or co-defendants, mother's or father's siblings, also those who are related by marriage and the children of the defendant's relatives up to the third degree; c. husband or wife of the accused or divorced or jointly as defendants.

⁹ Simons at Darwin Prinst, *Op.Cit.* pg. 65.

¹⁰ Rusli Muhammad, *Contemporary Criminal Procedure Code*, Citra Aditya Bakti, Bandung, 2007, p. 87 [Rusli Muhammad, *Hukum Acara Pidana Kontemporer*, Citra Aditya Bakti, Bandung, 2007, hlm. 87]

¹¹ Elishabeth N Butarbutar, The Law of Proof (Analysis of the Independence of Judges as Law Enforcers in the Proof Process, Nunasa Aulia, Bandung, 2016, p. 13. [Elishabeth N Butarbutar, *Hukum Pembuktian (Analisis Terhadap Kemandirian Hakim Sebagai Penegak Hukum dalam Proses Pembuktian*, Nunasa Aulia, Bandung, 2016, hlm. 13.]

¹² See Article 1 point 27 of the Criminal Procedure Code which reads: Witness testimony is one of the pieces of evidence in a criminal case in the form of a statement from a witness regarding a criminal event that he himself heard, saw for himself and experienced himself by stating the reasons for his knowledge.

¹³ M. Yahya Harahap, *Op. Cit.* pg. 286.

¹⁴ R. Soesilo, Criminal Procedure Law "Criminal Case Settlement Procedures According to the Criminal Procedure Code for Law Enforcers, Politeia, Bogor, 1982, p. 113. [R. Soesilo, *Hukum Acara Pidana "Prosedur Penyelesaian Perkara Pidana Menurut KUHAP Bagi Penegak Hukum*, Politeia, Bogor, 1982, hlm. 113].

¹⁵ Andi Sofyan and Abd. Asis, "An Introduction" Criminal Procedure Code, Kencana, Jakarta, 2014, p. 239. [Andi Sofyan dan Abd.Asis, *Hukum Acara Pidana "Suatu Pengantar"*, Kencana, Jakarta, 2014, hlm. 239.]

Attorney, so that other quality evidence is needed, in this case the application of forensic psychology to cases with minimal evidence, such as murder cases.

Therefore, in the process of investigating a criminal act of murder, pro justitia psychological results have a very large role in disclosing murder cases, so that there is synchronization between the criminal act and the criminal who can be held accountable. The pro-justitia psychological results function can be used, including in helping to understand the incidence of understanding aggression, detecting misleading information during the examination process (detecting deception), can help in knowing the background of the crime of sadistic murder and serial killing or serial killers (psychopaths and serial killers), terrorism crimes, crimes against sex, reasons for admitting madness to avoid legal obligations and responsibilities, assisting in making an analysis profile of the perpetrators of crimes, as well as various other things.

The above description shows that to seek material truth in criminal cases, especially the crime of murder, with the existing evidentiary system, namely adhering to a negative statutory proof system and with the presumption of innocence, psychological results are needed. Therefore, this research was conducted to examine the existence of the psychological results of the perpetrators of the crime of murder as pro justitia evidence.

2. Methodology

The type of research used is normative legal research, the legal research method uses a distinctive frame of mind, namely *juridisch denken* based on the concepts, principles and systematics of law that are known to him, this method can only be understood by a legal scholar and cannot be understood by non-jurists. (not a legal expert) because of a different frame of mind. Legal research is the daily activity of a law scholar, legal research is a process to find legal rules, legal principles, and legal doctrines to answer legal issues at hand, which relates to the existence of psychological results from proving criminal cases, especially murder.

The juridical-normative approach, namely law is conceptualized as norms, rules, principles or dogmas. The normative juridical approach is also known as the doctrinal approach/ research or normative legal research. Included in the study/juridical-normative approach is research on legal principles; research on legal systematics; research on the level of legal synchronization; legal history research; and comparative law research. So that what is studied is the compatibility between legal principles and existing norms. The main data in this research is secondary data in the form of primary, secondary and tertiary legal materials.

3. Result and Discussion

Problems faced by humans. One of them is the problem in the field of law, the part of psychology that handles it is often known as forensic psychology. So broad is the field of study of legal psychology that Blackburn Kapardis, divided the field into three fields, psychology in law, psychology and law, psychology of law. Psychology in law, is a practical application of psychology in the field of law such as psychologists being invited to be expert witnesses in court proceedings. Psychology and law, includes the field of psycho-legal research, namely research on individuals related to law such as judges, prosecutors, lawyers,

defendants. Psychology of law, the relationship between law and psychology is more abstract, law as a determinant of behavior. Issues studied include how society influences law and how law influences society.¹⁶

Psychology seeks to explain the process of seeking the truth in criminal case investigations. the completeness of a criminal case that applies the provisions of criminal procedural law honestly and precisely, 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 determine whether it is proven that a crime has been committed and the person charged it can be blamed.

The criminal justice system in Indonesia consists of components from the police, prosecutors, district courts and correctional institutions as law enforcement officers. Investigations in this paper can be carried out either by the police, prosecutors, or judges. However, the investigation process by the police is an important phase, because it is at that time that the Minutes of Examination are drawn up. Investigators are the first to meet suspects, witnesses, and victims and ask them about the events they experienced. Errors in the investigation will have an influence on reaching the truth in the criminal justice process at a later stage in the prosecutor's office and court. Often the police in carrying out investigations use "violent" methods (physical or psychological), this will actually damage the memory of witnesses, victims and suspects.¹⁷

The use of psychological results in proving a murder case can be seen in the case of the murder of Brigadier J, which caught the public's attention because it involved the Kadiv Propam Polri and his wife. In proving this case also involved forensic psychologist Reza Indragiri Amriel. So that the court's decision against the defendants is very parriative, because each has a different role and even different motives. This can be determined by the results of a psychological examination.

Forensics itself comes from the Latin word "forensis" which means "forum" or the ancient Roman court system. This field is used by law enforcement or related parties to reveal the motives of a crime, or the impact of a crime tragedy on the psyche. Further related to the notion of forensic psychology, as defined by the American Psychological Association or APA, is the application of clinical (psychological) clinical specialties to the realm of law. Christopher Cronin, in his book *Forensic Psychology*, as quoted from the apa.org page, defines forensic psychology as the application of clinical specialization to legal institutions and people who come into contact with the law.¹⁸

¹⁶ Jaclylene Rachel Malonda, "The Function of Legal Psychology in Enforcement of Criminal Law in Indonesia, *Lex Crimen* Vol. VIII/No. 5, May 2019, p 36. [Jaclylene Rachel Malonda, "Fungsi Psikologi Hukum dalam Penegakan Hukum Pidana di Indonesia, *Lex Crimen* Vol. VIII/No. 5, Mei 2019, hlm 36]

¹⁷ *I b I d*, hlm. 37.

¹⁸ Arief Budiarto, "The Role of Psychology in Law Enforcement of Violent Criminals in Households", *Tambun Bungai Journal of Legal Studies*, Vo. 2, No. 2, September 2017, p. 102. [Arief Budiarto, "Peran Psikologi dalam Penegakan Hukum terhadap Pelaku Tindak Pidana Kekerasan dalam Rumag Tangga", *Jurnal Ilmu Hukum Tambun Bungai*, Vo. 2, No. 2, September 2017, hlm. 102]

Forensic psychology is considered a new specialty field within psychology. This science was officially recognized as a special field by the American Psychological Association in 2001. However, the field of forensic psychology actually has its roots in the first psychology lab of Wilhelm Wundt in Leipzig, Germany. Philosophers and scientists have long sought to understand what makes people commit crimes, behave aggressively, or engage in antisocial behavior.

Forensic psychologists can be applied in many different legal environments. Some of the functions that are usually carried out in forensic psychology include competency evaluation, sentencing recommendations, evaluation of the risk of re-offending, testimony as an expert witness, and evaluation of child custody. Other functions include academic research on crime, law enforcement consultants, treatment of offenders, providing psychological services to convicts and offenders, trial consultants assisting with jury selection, witness preparation, or legal strategy, and designing correctional programs.

Quoting the Chicago School of Professional Psychology page, there are 12 forensic psychology careers, namely Correctional Counselor or Correctional Counselor, Jail Supervisor or Prison Supervisor, Victim Advocate or Victim Advocate, Federal Government Employee or Federal Government Employee, Jury Consultant or Jury Consultant, Police Consultant or Police Consultant, Licensed Professional Clinical Counselor or Licensed Professional Clinical Counselor. Apart from that, in the world of forensic psychology there are more Probation Officers or Supervisors on probation, Crime Analysts or Crime Analysts, Forensic Research Psychologists or Forensic Research Psychologists, Investigative Journalists or Investigative Journalists, and Forensic Social Workers or Forensic Social Workers. So, the role of psychology is needed in explaining a criminal case, especially murder.

In proving the crime of murder requires evidence. The strength of evidence has implications for court decisions in resolving criminal cases. in Article 184 of the Criminal Procedure Code (the book of the Criminal Procedure Code) valid evidence is:

1. Witness testimony
2. Expert Statement
3. Letters
4. Hint
5. Statement of the Defendant

As has been stated that the basis for prosecution for the Public Prosecutor must be based on valid evidence as stipulated in Article 184 of the Criminal Procedure Code. Likewise, judges in deciding criminal cases must be based on Article 184. It is known in the justice system, the presence of evidence determines the legal decision taken by the judge.

The strength of the evidence can prove the court's decision that the decision is correct so that the suspect is found guilty. In the settlement of criminal cases, a person is considered guilty if a decision has permanent legal force (inkracht). The strength of this evidence supports the judge in court in deciding the case.¹⁹

The strength of evidence is based on the judge's observation to assess the agreement between the facts and the crime being charged and also the agreement between each piece of evidence and the indictment and not the crime being charged. Evidence can be defined as anything that can be used to prove the truth of an incident in court. Regarding what is included as evidence, each procedural law of a court will regulate it in detail.

In murder cases, the judge often finds it difficult to see the suitability of the evidence. The perpetrators in murder cases, especially in case 340 of the Criminal Code (premeditated murder) have motives that are difficult to uncover. Just look at the case of Brigadier J, the motive for the murder is still unclear. Therefore, the results of a psychological examination of the perpetrators are needed to determine their intentions and motivations in committing the murder.

Psychological assessment in murder crime cases, as a method and tool, the utilization of psychological assessment data will depend heavily on the individual using it, both psychologists and decision makers in organizations, so it is necessary for us to have an open, critical and at the same time positive attitude in understanding information and make decisions. It is known that the psychological examination report consists of the following:²⁰

1. Subject Identity
2. Complaints/Chronology
3. Complaint History
4. Praesens Status (Physical Status, Psychic Status)
5. Observation (General Observation), Special Observation of Curriculum Vitae.
6. Anamnesis
7. Interim Conclusion

The results of psychological assessments can provide objective information about individual abilities. Not infrequently the results of the psychological assessment become a determinant, or provide a significant weight contribution to decision making about someone in the company. That's fine, considering that psychological assessment is a scientific method that can be accounted for, as long as the test kits, the observation or interview process and the psychologist who collects the data and reads it, are trained and master the tools, observation and interview techniques used.

It often happens that after the psychological assessment data is obtained, various questions arise, especially when the assessment results are 'incompatible' or not in line with other data, for example educational background, work experience or daily interactions. Or, test results elsewhere show different results. Or, out of the tens or hundreds of participants, only a few are suggested. Or, after the candidate is accepted, it turns out that the performance is not as expected.

Psychological assessments provide data that are recommendations, not the only data on which to base decisions. Thus, it needs to be supplemented with other data such as track records, interviews or field competency tests. Recommendations from the results of the psychological assessment are made based on position targets and organizational characteristics or nature, so recommendations cannot be used for different purposes.

¹⁹ I. Rusyadi, "The Power of Evidence in Criminal Case Trials", *Journal of Prioris Law*, Vol. 5, No. 2, 2016, p. 128. [I. Rusyadi, "Kekuatan Alat Bukti dalam Persidangan Perkara Pidana", *Jurnal Hukum Prioris*, Vol. 5, No. 2, Tahun 2016, hlm. 128]

²⁰ <https://dokumen.tips/documents/laporan-hasil-pemeriksaan-psikologi.html>, Access on Maret 2023.

Psychological assessment measures a person's potential, character or role competence, does not measure technical competence or a specific field of work, so a separate assessment is necessary if the job demands require certain skills from a person. Finally, the results of psychological assessments, especially for people development purposes, need to be followed up with intervention efforts.

Psychological techniques are needed to reduce the information bias that occurs. The two techniques commonly used are hypnosis and cognitive interviewing which require psychological skills to apply. The substance of the expert's testimony before the court session can be accounted for scientifically, namely the results of interviews, the results of testing which consists of several written tests including a graphical test or projective test, Thematic Apperception Test, SSCT, and Intelligence Test.

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The role of expert testimony for the completeness of evidence in the pro justisia case file with examination in court sessions is very helpful in efforts to increase the judge's confidence in decision making. Based on this discussion, it was concluded that the power of law from psychological results in proving a murder case is very important or significant in solving and proving a murder case. The strength of this evidence is very helpful for investigators in investigating a murder case and insinuating judges in the process of proof.²¹

4. Conclusion

The criminal justice process requires information from witnesses, victims and suspects. In the concept of psychology, the witness' memory is very vulnerable to the events he experienced, causing information to become inaccurate. To achieve material truth in criminal cases, especially murder, psychological results are needed. The power of psychological results is very significant in criminal cases to help provide input that will add to the judge's conviction whether it is the perpetrator who committed or did not commit the criminal act or is related to accountability (*mens rea*).

5. Suggestions

It is recommended that the existence of psychological results be strengthened in statutory regulations so that every psychologist who is presented at the trial, gets equal access to the perpetrators. This was done so that the psychologists presented by both parties could provide objective information at the trial in accordance with the complete data they received.

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²¹ I. Rusyadi, "The Power of Evidence in Criminal Case Trials", Journal of Prioris Law, Vol. 5, No. 2, 2016, p. 128. [I. Rusyadi, "Kekuatan Alat Bukti dalam Persidangan Perkara Pidana", Jurnal Hukum Prioris, Vol. 5, No. 2, Tahun 2016, hlm. 128]

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