



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD ISLAMIC UNIVERSITY
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International Conference
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

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Faculty of Law, Sultan Agung Islamic University
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Nagoya University, Japan
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Indonesia, September 05th 2017

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

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UNISSULA
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Organized by : Faculty of Law UNISSULA Semarang-Indonesia

FACULTY OF LAW
Sultan Agung Islamic University

IMAM AS SYAFEI BUILDING, Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.

Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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THE BASICS AND THE FUNCTIONS OF FINGERPRINTS OF MURDER PERPETRATORS

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ABSTRACT

Fingerprints as an evidence in the process of handling a criminal act, especially murder, is not a new thing because it is included in the legal evidence in accordance with relevant legislation. In the handling of murder crime, the identification process of the perpetrators is essential in order to know the perpetrators of crime and associated with a fingerprint of the murder perpetrator. Based on this, the authors propose fingerprints as the main evidence in murder crime. This study employed normative juridical approach method which means that in conducting research, besides looking at juridical side through looking at laws and regulations, the researchers also take a look at secondary data source such as law articles, various legal theories, as well as scientific work findings from scholars. The specification of this study is descriptive i.e. describing in detail, systematically and comprehensively thorough grouping, connecting, comparing and explaining about the fingerprint functions of murder perpetrators.

Keywords: Fingerprint, Criminal Perpetrator, Murder.

A. INTRODUCTION

In relation to the world of justice, evidences cannot be separated from it. In Islamic law, evidences can be in the form of Iqrar (confession), syahadah (testimony), yamin (oath), qasamah, science of judges, and qarinah (signs).¹ While in the positive law, evidence can be in the form of witness testimony, expert testimony, letters, instructions and the defendant testimony. While in the practice of criminal law, affirmed in the Criminal Procedure Code (KUHP) in Article 184, the valid evidences are: to be able to find the evidence, then, at the first stage, an investigation must be done, it is a process of searching and collecting evidence, identifying the crime of occurrence, and finding the suspect.²

In cases such as unusual murders, the polices are usually able to cope and conduct investigations by means of fingerprints of perpetrators who are set in the Criminal Procedure Article 7 (1) f about taking fingerprints and photographing a person by consideration that the

¹ TM.Hasbi Ash Shidieqy. Peradilan dan Hukum Acara Islam. (Bandung: Al-Maarif), p. 32.

² Nur'aini A.M. Hukum Acara Pidana. (Yogyakarta: Fakultas Hukum Syariah IAIN Sunan Kalijaga.2003).p.17.

perpetrators executing the action must leave fingerprints around the scene of crime. Fingerprints are the first step of investigation by the police to reveal a case and as soon as possible to find the perpetrators.

The process of investigation will be done through several stages and one of them is by taking fingerprints. The fingerprint is taken in the investigation process to further examine the evidence that may be left at the crime scene. The results achieved from the investigation are called Dactyloscopy or knowledge of fingerprints.³ Fingerprint identification is the science of fingerprints for the purposes of re-introduction of identity by observing the lines contained in the line strokes of fingers and soles of the feet. Dactyloscopy is derived from the Greek word Dactylos which means the fingers or finger line, and Scopein which means observing or researching. From that sense, then we know the term in English "Dactyloscopy" that we know as the science of fingerprint.⁴

Evidence is a matter that plays a role in the examination process in court. Through this verification, the status of the defendant is decided. If the result of evidence by means of evidence prescribed by law is "insufficient" to prove the guilt of the defendant, then the defendant is "acquitted" of the sentence. On the contrary, if the defendant can be proved by means of evidence, then the defendant shall be found guilty, and the defendant shall be sentenced. Therefore, judges must be careful, thorough, assess and consider the probative value.⁵

B. DISCUSSION

1. Fingerprint Fundamental Law as Main Evidence Tool

To prove a criminal case, the judge must actively seek and discover the material truth, it is the criminal act as described in the indictment against the defendant which is truly happening, and there is a mistake of the defendant, and the accountability of the offense by

³ Karjadi, M,1971. Tindakan dan Penyidikan Pertama ditempat Kejadian Perkara. (P.T. Gita Karya, Jakarta) p.54.

⁴ Marzuki Yahya, Teknik Membaca Garis Tangan dan Sidik Jari, http://id.wikipedia.org/wiki/Sidik_jari#Sidik_jari_untuk_identifikasi, Retrieved on Tuesday, August 14, 2012, 19:15 WIB

⁵ M. Yahya Harahap, Pembahasan Permasalahan dan Penerapan KUHAP:PemeriksaanSidang Pengadila , Bandung, Kasasi, dan Peninjauan Kembali,Edisi ke-2, (Cet. 8. Jakarta: Sinar Grafika, 2006), p. 273.

the defendant. Formerly, the evidences set out in Article 295 HIR (Herzien Inlandsch Reglement) were witness statements, letters, recognition, signs (directions). From the general definition in the previous discussion, fingerprint is defined as reproductive outcomes of finger or footprint either deliberately taken, stamped with ink, or trace left on the body for ever touched skin of the palms or feet.⁶

In the settlement of criminal acts, of course, it would be through the process of investigation which will bring the facts or evidence that will lead to a direction to find the suspect. After the criminal incident, then the action called "Investigation" is started. From the point of term, Investigating is opsporing or investigation. The investigation is a series of investigative actions in respect of and in the manner prescribed in the law to seek and collect evidence to prove the offense and to find the suspect.⁷

In this case, the fingerprint as evidence can be in the form of a letter from the expert's information as well as a guide which becomes legal evidence in accordance with the Criminal Procedure Code. Regarding the question of whether a fingerprint may bind or influence a judge in the judgment, we need to re-observe the provisions of Article 183 of the Criminal Procedure Code which states: "The judge shall not impose a penalty on a person except if with at least two valid evidences he obtains confidence that a criminal act actually took place and that the defendant was guilty of doing so."

2. The Functions of Fingerprint as a Main Evidence in Murder Crime

In murder case, it is not easy to identify and find defendants through witness' information. Therefore, Police as an authorized institution, employs various methods in exposing the perpetrators of such crimes, one of which is by using fingerprints. Judged from the perspective of the criminal justice system in general and the criminal procedural law (Formeel Strafrecht / Strafprocessrecht) in particular, the evidentiary aspect takes a decisive role in declaring a person's fault so as to be sentenced by a judge.

⁶ Hari Sasangka dan Lily Rosita, *Hukum Pembuktian Dalam Perkara Pidana*, Mandar Maju, 2003, p.31.

⁷ Andi hamzah, 2008, *Hukum Acara Pidana Indonesia*, Jakarta: Sinar grafika offset. p.120.

The judge in sentencing a judgment, not only in punishment, may also impose a verdict of free and escaped from all lawsuits. A verdict of free shall be imposed by a judge if the court (judge) considers that from the result of a hearing in court, the defendant's faults or deeds charged to him are not legally and convincingly proven. Then, the verdict of free from any lawsuits would be handed down by the judge if the court (judge) is of the opinion that the act accused to the defendant is proven, but the act is not a crime.⁸

This also becomes the basis of Article 39 paragraph (1) of KUHAP (the Criminal Procedure Codes). In addition, the search for evidence is also done by identifying the corpse at the crime scene by the Forensic Laboratory (Labfor) or Forensic Doctors to find signs of the cause of the killing of the victim. In the case of murder crimes where the perpetrators have not been found, firstly it needs to do fingerprint identification at the scene. For investigators, evidences in murder crime play a role in exposing the perpetrators of the crime, and revealing the true events of the case. For prosecutors, evidences in murder are used as a basis for prosecuting the alleged offender of murder. While for judges, evidences will be the basis of consideration in sentencing to defendants.

Fingerprints can analyze the offender in terms of signal elements consisting of body shape, face shape, head shape, forehead shape, and other body shapes. In the case of technical fingerprinting in cases of murder, fingerprinting is performed at a locus delicti by a police identification unit where the fingerprints can be removed when they are in a non-absorbing place or object such as glass, glass, iron, or atoms that must be taken properly, so that they are not damaged. When seen or lifted, the fingerprints are then used to compare with the suspected offender and its suitability with identical to the alleged perpetrators of murder.

This fingerprinting will go through the process of comparison by recording the ten fingerprints either the hands or feet towards those suspected offenders. By moving the AK-23

⁸ Lilik Mulyadi, *Putusan Hakim dalam Hukum Acara Pidana Indonesia: Perspektif, Teoritis, Praktik, Teknik Membuat dan Permasalahannya*, Bandung: PT. Citra Aditya Bakti, 2010, hlm.56.

card fingerprint and taking the identity of the people, these are done so that the possibility of a person's fingerprints can be left behind before the incident occurred, but that person is not the offender. In addition, the AK-23 card is also useful as a preliminary data which can be used at any time as a comparison in search of one's identity and public services. If identical fingerprints are on the scene of the case with the fingerprints of a suspected person then the person is the murderer.

Fingerprints function not only to assist in the process of identifying murder cases that have not been revealed, in which the identity of the victim or defendant has not been revealed yet. Proving evidences through fingerprints is also commonly done by police to establish perpetrators of murder so as not to be wrong in an arrest. The crime scene is done with evidence at the scene by using the process of fingerprint appointment to track defendant's whereabouts when the possibility of escaping so that the police follow-up process in handling a murder case can be faster with a fingerprint identification.

C. CLOSING

1. Conclusion

The concrete form of a fingerprint in a murder case may take the form of a certificate made by an expert (Article 187 letter c of KUHAP) which can be qualified as a proof of letter. The fingerprint identification which functions as the primary evidence in murder offenses included in the investigation process is to assist police in identifying identity allegations of suspected offender in where to provide accurate evidence in the investigation process to establish the suspect.

2. Suggestions

Based on the discussion, some suggestions may be concluded as follows:

1. Considering the importance of the role of fingerprints, it is necessary to immediately ratify the Dactiloscropy Bill into Dactiloscropy Law and succeed INAFIS program (Indonesia Automatic Fingerprint Identification System).
2. Considering that fingerprints will not change from birth to death, it is suggested to take the fingerprint of every Indonesian citizen at the earliest possible age, i.e. when obtaining a birth certificate.

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