

PRESUMPTION OF INNOCENCE IN MURDER TRIALS: LEGAL PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE IN INDONESIAN CRIMINAL LAW

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Abstract

Murder is one of the most serious criminal offenses with the heaviest penalties in the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP). Valid evidence is regulated in Article 184 paragraph 1 of the KUHP, which includes witness statements, expert opinions, documents, exhibits, and the defendant's statements. A judge can only impose a criminal sentence on the defendant with at least two valid pieces of evidence. This research adopts a normative juridical research method with a conceptual and case approach. The data collection method applied is literature research, where literature such as books, notes, and reports from previous studies serves as the primary source of data. In the case of the premeditated murder of Wayan Mirna Salihin, the strength of the circumstantial evidence used in the trial, such as Closed Circuit Television (CCTV) recordings, can be considered weak. This is because the recording does not clearly show or monitor that Jessica Kumala Wongso directly placed cyanide into the Vietnamese iced coffee consumed by the victim. Therefore, the judge should carefully weigh and implement the presumption of innocence principle for the defendant before deciding the case, especially after the discovery of the CCTV evidence.

Keyword: *Law, Strength of Evidence, Clues, Murder*

A. INTRODUCTION

Murder is a criminal offense regulated in the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*) under the category of crimes against life (*misdrijven tegen het leven*). In the KUHP, the crime of murder can be categorized into several articles.¹ Article 338 deals with ordinary murder, where someone intentionally takes the life of another person.² Article 339 discusses murder with aggravating circumstances, indicating an element of cruelty or extra violence in the commission of the murder. Article 340 regulates premeditated murder, where the crime is carefully planned in

¹ Iriyanto, Echwan and Halif Halif. "Unsur Rencana Dalam Tindak Pidana Pembunuhan Berencana." *Jurnal Yudisial* 14, no. 1 (2021): 21.

² Zulkarnain, Zulkarnain. "The Perspective Of Criminal Law And Human Rights Against Euthanasia." In *Proceedings of The International Conference on Environmental and Technology of Law, Business and Education on Post Covid 19, ICETLAWBE 2020, 26 September 2020, Bandar Lampung, Indonesia*. 2020. 16.

advance. Articles 341 and 342 are related to the murder of a newborn by its own mother, with Article 342 emphasizing premeditated murder. Article 344 addresses murder at the request of the person involved. Article 345 categorizes actions of persuading, inciting, or assisting others in committing suicide. Articles 346 to 348 discuss abortion, whether with the mother's consent or without, and whether the action results in the death of the mother. Article 349 targets doctors, midwives, or pharmacists who assist in abortion based on the provisions in Articles 346, 347, and 348.³

In Article 338 of the KUHP regarding intentional murder, it implies a criminal act where the perpetrator intentionally and consciously takes the life of another person. The element of intent here indicates the perpetrator's own will to commit an act that is prohibited, with an understanding that the perpetrator intentionally and knowingly carries out the action. This offense encompasses elements and qualifications, namely murder as an act violating criminal law, and the criminal sanctions that will be imposed as a consequence of such actions.^{4,5} Meanwhile, Article 340 of the KUHP regulates premeditated murder, defined as the act of taking someone's life after careful planning. This planning includes aspects such as timing, method, location, and individuals involved, with the aim of ensuring the success of the murder or avoiding arrest. Premeditated murder is considered the most serious type of homicide in criminal law, and the perpetrator can be subjected to the death penalty as a sanction for the committed crime.⁶ A profound understanding of the elements and qualifications in this article is crucial to ensuring justice and effective law enforcement in cases of premeditated murder.^{7,8}

In the criminal legal process, proving whether a suspect is the perpetrator of a murder or not requires the use of valid evidence. This provision is regulated in Article 183 of the KUHP, stating that a judge can only impose a sentence on the defendant if there are at least two pieces of

³ Halawa, Martinus, Zaini Munawir, and Sri Hidayani. "Penerapan Hukum Terhadap Tindak Pidana Pembunuhan Dengan Sengaja Merampas Nyawa Orang Lain (Studi Kasus Nomor Putusan 616/Pid. B/2015/PN. Lbp)." *JUNCTO: Jurnal Ilmiah Hukum* 2, no. 1 (2020): 10.

⁴ Kaudis, Dewi Misi. "Tinjauan Yuridis Terhadap Pelaku Pembunuhan Dalam Keadaan Terpaksa Untuk Membela Diri Menurut Pasal 49 KUHP Dan Pasal 338 KUHP." *Lex Crimen* 10, no. 3 (2021): 17.

⁵ Siagian, Anna Andriany. "Tinjauan Yuridis Tindak Pidana Pembunuhan Berencana Serta Akibat Hukumnya (Studi Kasus Terhadap Putusan No.: 393/PID/2016/PT. DKI)." *PETITA* 3, no. 1 (2021): 29.

⁶ Larkin Jr, Paul J., and GianCarlo Canaparo. "Are criminals bad or mad: Premeditated murder, mental illness, and *Kahler v. Kansas*." *Harv. JL & Pub. Pol'y* 43 (2020): 85.

⁷ Bennett Moses, Lyria, and Janet Chan. "Algorithmic prediction in policing: assumptions, evaluation, and accountability." *Policing and society* 28, no. 7 (2018): 809.

⁸ Pieter, Salvadoris, and Erni Dwita Silambi. "Pembuktian dalam Tindak Pidana Pembunuhan Berencana Ditinjau dari Kitab Undang-Undang Hukum Pidana." *Jurnal Restorative Justice* 3, no. 1 (2019): 76.

valid evidence.⁹ This underscores the importance of having strong and valid evidence to support the charges against a suspect in a murder case. To determine valid evidence, KUHP in Article 184 paragraph (1) explicitly lists the types of evidence that can be used, including witness statements, expert opinions, documents, exhibits, and the defendant's statements. Therefore, in a murder trial, investigation and evidence collection must adhere to legal requirements regarding the types of evidence that can be recognized and accepted by the court. Thus, the legal process can proceed fairly and transparently, with the certainty that the judge's decision is based on valid and relevant evidence.^{10,11}

This research aims to analyze the strength of evidence in the case of the murder of Wayan Mirna Salihin. The primary focus of this study is on the evidence of expert testimony, particularly the forensic results obtained from forensic doctors, and circumstantial evidence in the form of Closed Circuit Television (CCTV) recordings from the crime scene. The research questions encompass inquiries into what is recognized as valid evidence according to the KUHP and how strong the circumstantial evidence is in the context of the premeditated murder case involving Wayan Mirna Salihin. In the context of criminal law, the KUHP establishes standards regarding valid evidence, serving as the foundation for this study to evaluate the admissibility of expert testimony and circumstantial evidence in the form of CCTV recordings in the process of proving the case. The analysis will focus on the strength of both types of evidence in assisting the court in making decisions related to the accusation of premeditated murder in the case of Wayan Mirna Salihin.

B. RESEARCH METHODS

This research utilizes a normative juridical research method. The study is conducted with a conceptual approach and a case approach. The conceptual approach focuses on theoretical concepts related to the researched issue. These concepts can be derived from the views of scholars, experts, legal doctrines, and can even be implicitly found in legislation. The research requires a specific approach to understanding *ratio decidendi*, which are the legal reasons used by judges in decision-making. The data collection method applied is literature research, where literature such as books, notes, and reports from

⁹ Kurniawan, Andhika Widya, and Maryanto Maryanto. "Using of Letter Evidence by Defendant in Murder Crime." *Law Development Journal* 2, no. 3 (2020): 386.

¹⁰ Biedermann, Alex, and Joëlle Vuille. "The decisional nature of probability and plausibility assessments in juridical evidence and proof." *International Commentary on Evidence* 16, no. 1 (2018): 20190003.

¹¹ Amiruddin, Miftahul Chaer, and Rahman Syamsuddin. "Analisis Yuridis Pertimbangan Tentang Keyakinan Hakim Dalam Memutus Perkara Dengan Berdasarkan Circumstantial Evidence Atau Bukti Tidak Langsung (Studi Putusan No. 777/Pid. B/2016/Pn. Jkt. Pst Kasus Jessica Kumala Wongso)." *Alauddin Law Development Journal* 3, no. 3 (2021): 533.

previous studies serves as the primary source of data. The analysis employed in this research is qualitative analysis, where data derived from theory, concepts, legislation, judicial decisions, legal principles, and expert opinions are analyzed in-depth. Through this research method, a deeper understanding of the legal issue under investigation can be achieved. The conceptual and case approaches provide a solid framework, while literature research and qualitative analysis are used to delve into and interpret information more profoundly to support the research arguments and conclusions.

C. RESULTS AND DISCUSSION

1. Valid Evidence According to the Criminal Procedure Code

Evidence in the legal context refers to the means or proof used to substantiate a statement or allegation in the judicial process, especially in criminal cases.¹² The efforts to prove such statements must adhere to recognized and permissible legal provisions to be considered valid and admissible in court. According to Pribadi,¹³ evidence used to prove criminal acts must be valid, meaning it must meet certain standards recognized by the legal system. Valid evidence can take various forms, such as physical evidence, witnesses, recordings, documents, or electronic evidence.¹⁴ The use of valid evidence is crucial in determining the truth of an accusation in court. Therefore, the parties involved in a case are expected to present evidence that meets legal requirements to support arguments and the continuity of the legal process. The principle of justice can be realized through the use of valid evidence in accordance with prevailing legal norms.¹⁵

The role of evidence in criminal cases is central and crucial in determining the final outcome of the trial process.¹⁶ The process of proving becomes the main focal point because it involves efforts to prove the guilt or innocence of the accused as charged by the Public Prosecutor (*Jaksa Penuntut Umum*/JPU). The evidence used in the process of proving must comply with the provisions of the applicable law, and the outcome of the evidence will significantly influence the final decision made by the judge. The success of the JPU in proving the guilt of the accused based on valid and relevant evidence

¹² Littlejohn, Clayton. "Truth, knowledge, and the standard of proof in criminal law." *Synthese* 197, no. 12 (2020): 5255.

¹³ Pribadi, Insan. "Legalitas Alat Bukti Elektronik Dalam Sistem Peradilan Pidana." *Lex Renaissance* 3, no. 1 (2018): 4.

¹⁴ Irfan, Muhammad, and Iyah Faniyah. "Kekuatan Pembuktian Alat Bukti Petunjuk Pada Tindak Pidana Pembunuhan Berencana." *UNES Journal of Swara Justisia* 4, no. 2 (2020): 106.

¹⁵ Werluka, Lorens. "Alat Bukti Yang Sah Dalam Pembuktian Menurut Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana (KUHP)." *Jurnal Belo* 4, no. 2 (2019): 229.

¹⁶ Herman, K. M. S., Faisal Santiago, and Bambang Bernanthos. "Rekonseptualisasi Tindak Pidana Pajak yang Merugikan Keuangan Negara sebagai Tindak Pidana Korupsi di Indonesia." *Lex Publica* 5, no. 2 (2018): 23-30.

will determine the fate of the accused in court. The evidence presented is insufficient or does not meet the standards set by the law, the accused may potentially be acquitted of the charges.¹⁷ Conversely, if the evidence used meets these standards, the judge may declare the accused guilty and impose a sentence in accordance with the prevailing law. The essence of the process of proving in criminal cases is the effort to prove or refute the facts contained in the formulation of the offense using legally recognized evidence.¹⁸

The Code of Criminal Procedure (*Kitab Undang – Undang Hukum Acara Pidana*/KUHP) regulates the types of evidence that can be used in the process of proving during court hearings. Article 184 paragraph 1 of the KUHP mentions several types of evidence, including witness testimony, expert testimony, documents, exhibits, and the defendant's statement. Witness testimony, as specified in Article 185 paragraph 1 of the KUHP, is what is spoken or declared by a witness during the trial. Meanwhile, expert testimony, as explained in Article 186 of the KUHP, is what is stated by an expert before the court based on their in-depth knowledge of a particular matter.¹⁹

Article 184 paragraph 1 letter c of the KUHP regulates documents as evidence. These documents must be made under oath or affirmed by oath and can include reports, official letters, or other documents made by an authorized public official or in their presence. Article 187 of the KUHP details the types of documents that can be considered as evidence, including expert statements, documents made according to legislation, and other documents relevant to the content of other evidence.²⁰ Exhibits, as explained in Article 188 paragraph 1 of the KUHP, are actions, events, or circumstances that indicate the occurrence of a criminal act and the perpetrator. On the other hand, the defendant's statement, as regulated in Article 189 paragraph 1 of the KUHP, is what the defendant declares or states themselves during the trial regarding their actions or what they know. All these types of evidence play a crucial role in assisting the court in determining the truth of the facts related to the criminal case being heard.²¹

¹⁷ Walters, Glenn D., and P. Colin Bolger. "Procedural justice perceptions, legitimacy beliefs, and compliance with the law: A meta-analysis." *Journal of experimental Criminology* 15 (2019): 344.

¹⁸ Ingram, Jefferson L. *Criminal evidence*. Routledge, 2021.

¹⁹ Helmawansyah, Muhammad. "Penggunaan Barang Bukti Elektronik yang Dijadikan Alat Bukti dalam Perkara Pidana." *Journal of Law (Jurnal Ilmu Hukum)* 7, no. 2 (2021): 533.

²⁰ Biloro, Sofio. "Kekuatan Alat Bukti Keterangan Ahli dalam Pembuktian Perkara Pidana menurut KUHP." *Lex Crimen* 7, no. 1 (2018): 9.

²¹ Kasidin, Sunarko. "Kajian Hukum Tentang Kekuatan Alat Bukti Yang Dipublikasikan Oleh Seorang Ahli Di Luar Pemeriksaan Persidangan Dihubungkan Pasal 184 Kuhap." *FOCUS: Jurnal of Law* 2, no. 1 (2021): 3.

2. The Strength of the Evidence of Clues Obtained in the Premeditated Murder Case of Wayan Mirna Salihin

The murder case involving Jessica Kumala Wongso and her former friend, Wayan Mirna Salihin, occurred on January 6, 2016, at Cafe Olivier. Jessica Kumala Wongso and Wayan Mirna Salihin arranged a meeting through online media or a WhatsApp group due to not having seen each other for a long time. Closed Circuit Television (CCTV) footage shows that Jessica Kumala arrived first and reserved a table. After Wayan Mirna arrived and had a brief conversation with Jessica Kumala Wongso, Wayan Mirna took a sip of the Vietnamese iced coffee ordered by Jessica Kumala. Shortly after, Wayan Mirna suddenly collapsed and, upon being taken to the hospital, was declared dead. In this case, Jessica Kumala was declared a murder suspect because all the evidence pointed to her, leading the judge to conclude that it was a premeditated murder. Jessica Kumala faced charges under Article 340 of the Criminal Code (*Kitab Undang – Undang Hukum Acara Pidana/KUHAP*).²² According to Article 183 of the KUHAP, a judge cannot impose a sentence on someone unless, with at least two valid pieces of evidence, they are convinced that a crime has indeed occurred and that the defendant is guilty of committing it.²³

In cases of premeditated murder resulting in the death of the victim, such as Wayan Mirna Salihin, an autopsy is necessary. In this context, forensic doctors play a crucial role in uncovering evidence from the examination of the deceased victim's body. Forensic doctors can also provide or even teach judges about the causality between the victim and the perpetrator by understanding the report in the *visum et repertum*.²⁴ The contents of the report provide medically substantiated and accountable information about the victim's condition, including signs indicating the victim's medical history or poisoning. The criminal code and the criminal procedure code provide a legal basis for forensic science, regulating the relationship between experts and authorities in solving an investigation. Article 133 paragraph (1) of the Criminal Procedure Code grants the authority to an investigator to request information from medical experts regarding cases involving victims of injury, poisoning, or death.²⁵

²² Abubakar, Ali, and Sidiq Munadial Haque. "Analysis of Islamic Criminal Law on the Use of CCTV Video Recording Tools (Decision Study Number 465/Pid. B/2019/PN Smg)." *Dusturiyah: Jurnal Hukum Islam, Perundang-undangan dan Pranata Sosial* 10, no. 2 (2020): 151.

²³ Asimin, Izmi Afifurahman KD. "Alat Bukti Keterangan Terdakwa dan Kekuatan Pembuktiannya Menurut Pasal 183 KUHAP." *Lex Crimen* 7, no. 1 (2018): 24.

²⁴ Bakhtiar, Handar Subhandi. "The regulation of autopsy in Indonesia." *International Journal of Scientific & Technology Research* 8, no. 10 (2019): 21.

²⁵ Trisna, Wessy, and Ridho Mubarak. "Position of Victims in Corruption Crime at the Medan Corruption Court." *International Journal Reglement & Society (IJRS)* 1, no. 2 (2020): 65.

The autopsy results of Wayan Mirna's body revealed significant findings related to pieces of evidence, becoming a crucial part of the investigation process. In the focus of the examination, the Vietnamese iced coffee, remnants of the drink containing a toxic or hazardous substance, namely Cyanide (CN) ions, were discovered. In evidence I, which is the Vietnamese iced coffee in a glass, the examination showed the presence of Cyanide ions amounting to 7,900 mg/l, equivalent to NaCN 14 g/l, with a pH of 13.0. Similarly, in evidence II, the Vietnamese iced coffee in a bottle contained Cyanide ions at 7,900 mg/l, equivalent to NaCN 15 g/l, with a pH of 13.0. Additionally, the examination of evidence V, which was the contents of the victim's stomach, also indicated the presence of Cyanide ions at 0.20 mg/l with a pH of 5.5. Although some pieces of evidence contained caffeine as a natural active compound found in coffee, the discovery of Cyanide ion content exceeding the safe limit became the primary concern.

The autopsy results were signed by Dra. Noordayati, Azhar Darlan Msi, Helmiyadi S.Si, Eti Susanti Amd. Farm., and acknowledged by Dr. Nursamran Subandi, M.Si, the Head of the Chemistry Biology Forensic Division (*Kepala Bidang Kimia Biologi Forensik*/KABID KIMBIOFOR) at the Central Forensic Laboratory of the Indonesian National Police. Based on the examination results, Dr. Nursamran Subandi, M.Si, a toxicology expert, concluded that Cyanide (NaCN) is corrosive to exposed materials, and the amount of Cyanide (NaCN) in the Vietnamese iced coffee consumed by the victim was approximately 298 mg, exceeding the lethal dose of Cyanide for a 60 kg human, which is only 171.42 mg. Therefore, Dr. Arief Wahyono, Sp.F, and Dr. Slamet Poernomo, Sp.F, DFM, forensic medical experts who conducted the Visum et Repertum examination on Wayan Mirna, concluded that the cause of Wayan Mirna's death was Cyanide. The Visum et Repertum results conducted by the Indonesian National Police (POLRI) revealed bluish coloration in the victim and corrosion in her stomach due to a corrosive substance. According to expert testimony, the poison dose entering the victim's body was twice the usual lethal dose, leading to Wayan Mirna's faster death, especially considering the discovery of 0.2 mg/liter of Cyanide in the stomach.

Apart from the forensic autopsy results, another piece of circumstantial evidence used by the judge was the CCTV. Specifically, Article 184 of the KUHAP, which regulates valid evidence according to the law, does not explicitly

include CCTV as a valid piece of evidence.^{26,27,28} In the case of Wayan Mirna Salihin's murder with Jessica Kumala Wongso as the suspect, electronic evidence, namely CCTV footage, was presented by the public prosecutor in court, indicating the defendant's involvement in placing Cyanide into the Vietnamese iced coffee ordered before Wayan Mirna Salihin arrived at Café Olivier. During the trial, Criminal Law Expert from Gadjah Mada University, Edward Omar Syarif Hiariej, stated that the CCTV footage served as evidence. However, it is important to note that the use of CCTV as circumstantial evidence in a murder case is not straightforward; other pieces of evidence, such as witness statements and defendant testimonies, must be found first. Only after discovering these two types of evidence can, they be linked to the CCTV footage. Subsequently, an analysis is conducted to determine whether the statements made by the witnesses and the defendant align with the CCTV recording. In this case, the evidence found was consistent with the witness statements, allowing the CCTV to be used as circumstantial evidence, in accordance with Article 188, paragraph (2) of the KUHAP.^{29,30}

The panel of judges listening to the defendant Jessica Kumala Wongso in the case of Wayan Mirna Salihin's death stated that electronic evidence in the form of CCTV footage could serve as guidance during the trial. According to Article 183 of the KUHAP, judges can make decisions based on evidence and assessments.³¹ Therefore, relying on CCTV recordings and other pieces of evidence, Jessica Kumala Wongso was convicted for placing Cyanide into the Vietnamese iced coffee consumed by Wayan Mirna Salihin. Thus, it can be concluded that in this case, the evidence presented by the investigators was inherently weak, but the introduction of circumstantial evidence through surveillance cameras or CCTV had a different impact on the judge's considerations and formed the basis for the defendant's conviction. In this situation, CCTV footage alone is not considered sufficient evidence. While this provision is restrictive under Article 184 of the KUHAP, it is a piece of evidence

²⁶ Priambudi, Tegar Kurnia, and Lathifah Hanim. "The Power of Proof against CCTV in Criminal Justice System." *Law Development Journal* 3, no. 2 (2021): 193.

²⁷ Mamulai, Muslim, Hardianto Djanggih, and Mirnawanti Wahab. "Strength of Evidence of Electronic Media (Teleconference) In The Criminal Justice System." *VRIJSPRAAK: International Journal of Law* 1, no. 1 (2017): 1.

²⁸ Nadeak, Leonardo Hasiholan. "Kedudukan saksi ahli dalam pembuktian tindak pidana pembunuhan menurut pasal 184 KUHAP." *Lex Privatum* 5, no. 4 (2017): 2.

²⁹ Nugroho, Bastianto. "Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHAP." *Yuridika* 32, no. 1 (2017): 21.

³⁰ Leonetti, Carrie. "Editor's Introduction: Truth and Fairness in East Asian Criminal Procedure." *New Criminal Law Review* 24, no. 1 (2021): 1.

³¹ Sepang, Giant KY. "Pembuktian Suatu Tindak Pidana Berdasarkan Barang Bukti Menurut Pasal 183 KUHAP." *Lex Crimen* 4, no. 8 (2015): 20.

that can be placed within the framework to gain the judge's confidence.³² Based on this evidence and evaluation, the judge sentenced Jessica Kumala Wongso to 20 (twenty) years in prison.

D. Conclusion

The results of this research conclude that valid evidence is regulated in Article 184 paragraph 1 of the Indonesian Code of Criminal Procedure (*Kitab Undang – Undang Hukum Acara Pidana/KUHAP*), which includes witness statements, expert testimonies, documents, circumstantial evidence, and defendant statements. A judge can only impose criminal punishment on a defendant with a minimum of two pieces of valid evidence, as stipulated in Article 183 of the KUHAP. Regarding the premeditated murder case of Wayan Mirna Salihin, the strength of circumstantial evidence, represented by Closed Circuit Television (CCTV) footage, used in the trial process can be considered weak. This is because the recording does not clearly show or monitor that Jessica Kumala Wongso was the one who directly put Cyanide into the Vietnamese iced coffee consumed by the victim, Wayan Mirna Salihin. This perspective is shared by the public prosecutor and the judge, based on the observed behavior of Jessica Kumala Wongso. Therefore, due to the perceived lack of strength in the circumstantial evidence available, this research concludes that the judge's decision to sentence Jessica Kumala Wongso to 20 years in prison seems less fair. Even though there is clear circumstantial evidence strengthening the case against the defendant, Jessica Kumala Wongso, the content of the CCTV footage cannot be considered strong evidence with certainty. Ideally, the judge should have carefully considered and applied the presumption of innocence to the defendant before making a decision in the case immediately after the discovery of the CCTV footage.

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³² Runtuwene, Maykel. "Kekuatan Pembuktian Keterangan Ahli Hukum Pidana dalam Penyidikan dan Pemeriksaan Sidang Pengadilan." *Lex Crimen* 8, no. 5 (2019): 10.

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