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Using of Letter Evidence by Defendant in Murder Crime

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Abstract.
Evidence is a problem that plays a role in the process of trial court examination which aims to find material truth. From the evidence, it is determined whether the defendant is guilty or not. At this stage of evidence, according to Article 52 of the Criminal Procedure Code, the defendant has the right to present mitigating evidence as a defense to give rise to the judge's conviction that he is innocent. The defendant's submission of mitigating evidence is to protect the rights of the defendant and uphold the principle of equality before the law. The evidence presented by the defendant to prove his innocence was documentary evidence. The purpose of this study was to identify and analyze the use of documentary evidence submitted by the defendant in a murder crime case and to find out the weaknesses and solutions to the use of documentary evidence submitted by the defendant in a murder crime case. This legal research uses empirical juridical research methods, by conducting descriptive analysis. This research uses a statutory approach, documents and field research. This legal research is also supported by the results of interviews with informants. Results of the study: The panel of judges accepted the use of documentary evidence by the panel of judges, but the strength of evidence could not be considered in the verdict. The reason is because documentary evidence is not independent evidence and must be supported by other evidence. In accordance with Article 183 of the Criminal Procedure Code, which regulates the minimum number of at least two valid pieces of evidence. The weaknesses of documentary evidence submitted by the defendant include: (a) From a formal perspective, that the power of proof of documentary evidence in a criminal case is controlled by the rules, namely Article 187 KUHAP, they must determine the conviction of the judge. Evidence in a criminal case to seek material truth, the judge is free and not bound by evidence. (b) In terms of material, whereas what is sought in criminal procedural law is material truth, then the consequence is that the judge is free to use or set aside a letter. Although there is no special regulation, according to the negative evidence system (negatief wettelijk bewijstheorie) adopted by the Criminal Procedure Code, namely there must be confidence from the judge regarding the evidence presented at trial. Even though from a formal perspective, the evidence is an official letter, but the value of perfection does not support it to stand on its own and must comply with the principle of the minimum limit of proof stipulated in article 183 KUHAP.
Keywords: Letter; Evidence; Criminal; Murder.

1. Introduction

Evidence is a problem that plays a role in the court hearing process. Through proof the fate of the defendant is determined whether guilty or not.[1] Proof is inseparable from the role of law enforcement officers. One of the provisions regulating how law enforcement officers carry out their duties is contained in the

[1] Harahap, M. Yahya. (2005). *Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali*. Jakarta: Sinar Grafika. p.252

Criminal Procedure Code (KUHAP) which has the objective of seeking and approaching material truth, namely the complete truth of a criminal case, by applying the provisions of procedural law. Honestly and accurately so that a criminal act can be revealed and the perpetrator is given the fairest decision.[2]

Evidence law is a set of legal rules governing proof, namely all processes, using valid evidence, and taking actions with special procedures in order to find out the juridical facts at trial, the system adopted in proof, the requirements and the procedure for submitting said evidence and the judge's authority to accept, reject and evaluate evidence. Therefore, the judge must be careful, careful, and mature in assessing and considering the evidentiary value. Examining the extent to which the minimum limit of power of proof or evidence of each piece of evidence referred to in Article 184 of the Criminal Procedure Code.

To declare the defendant's guilt or not, it is not sufficient based on the judge's conviction alone or based solely on evidence by means of evidence determined by law. A defendant can only be found guilty if the guilt he is accused of can be proven by means of evidence which is valid according to law and at the same time this proof is accompanied by the conviction of the judge.[3]

In Article 1 Paragraph (3) of the 1945 Constitution emphasizes: "Indonesia is a state of law", as a consequence it demands the principle of equality before the law. So in the process of the whole series of examinations to prove the defendant's guilt or innocence, starting from the investigation process until the decision was made by the panel of judges, in accordance with the applicable law, the defendant has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law.[4]

Based on Article 52 of the Criminal Procedure Code, the defendant has the right to defend what he is accused of at the evidentiary stage, the defendant has the right to present mitigating evidence, to give rise to the judge's conviction that he is innocent and to be lightly sentenced and even acquitted. The defendant's submission of evidence is not in line with Article 66 of the Criminal Procedure Code because it is the Public Prosecutor who is burdened with the obligation of proof to prove the defendant is guilty or not.[5] However, the defendant's submission of mitigating evidence is to protect the defendant's rights and uphold the principle of equality before the law.

The process of proving a crime cannot be separated from the evidence of witness testimony. The regulation of Article 184 Paragraph (1) states that the legal means of evidence are witness statements, expert statements, letters, instructions and statements of the accused, but testimony has the main place.[6]Letters and other

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[2] Hamzah, Andi. (2002). *Hukum Acara Pidana Indonesia.* Jakarta: Sinar Grafika. p.25

[3] Harahap, M. Yahya. (2010). *Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali*. Jakarta: Sinar Grafika. p.278-279

[4] Langgeng, Setyo. *"Peran Advokat Sebagai Penegak hukum dalam Mendukung Terwujudnya Sistem Peradilan Pidana Terpadu dalam Penegakan Hukum Pidana di Indonesia"*, Vol. 1 No. 1 (2018), url: http://jurnal.unissula.ac.id/index.php/RH/article/view/2618

[5] Soetarna, Hendar. (2011). *Hukum Pembuktian dalam Acara Pidana.* Bandung: PT Alumni. p.15

[6] Yuslan, Siti Nursyakirah & Sera Rosanto. *"Reconstruction of Expert Testimony for Determining The Judge Considering in The Corruption Case Based on Justice"*. In Jurnal Law Development, Vol. 1 No. 1 (2019), url: http://jurnal.unissula.ac.id/index.php/ldj/article/view/4956

written evidence, including electronic documents, can only be used as evidence if they are related to the criminal act committed. However, the correctness of the contents of letters and other written evidence, including electronic documents, must also be proven.[7] In addition to witness testimony, it is also possible to submit documentary evidence.

In addition to the public prosecutor who submitted documentary evidence, the defendant in his defense could submit documentary evidence to mitigate the charges addressed to him. But it is often weak before the panel of judges and tends to be ignored, so that the rights of the defendant are not accommodated in the proceedings at the trial. This is not in accordance with the principle of equality before the law and injures the sense of justice for the defendant.

2. Research Methods

This legal research uses empirical juridical research methods, by conducting descriptive analysis. This study uses a statutory approach, documents and field research. This legal research is also supported by the results of interviews with informants.

3. Results and Discussion

3.1. The use of documentary evidence submitted by the defendant in the murder crime case at the Blora District Court

The defendant's use of documentary evidence, the procedure for examining letters (*bewijsvoering*) in KUHAP was not regulated at all. Likewise, the power of proof (*bewijskracht*) of documentary evidence is also not mentioned in the Criminal Procedure Code. Although not regulated, the documentary evidence submitted by the defendant must be based on the provisions of Article 187 of the Criminal Procedure Code.[8] Likewise, the method of using and assessing the power of evidence attached to documentary evidence is carried out within the limits justified by law. The defendant, in the proceedings of the case Number: 9 / Pid.B / 2014 / PN.Bla. through his legal advisor, has submitted documentary evidence with the intention of strengthening the conviction of the Panel of Judges that the Defendant did not commit a crime at the time stated in the indictment of the public prosecutor.

Universally valid in the world, the obligation to prove (*bewijslast*) the defendant's guilt is the obligation of the public prosecutor. In the provisions of positive law in Indonesia, Article 66 of the Criminal Procedure Code adheres to the "ordinary burden of proof theory" or "the burden of proof theory on the public prosecutor", in which the obligation of proof is borne by the public prosecutor. But in practice the "balanced burden of proof theory" is often used.[9]Both the public

[7] Hiariej, Eddy OS. (2012) *Teori dan Hukum Pembuktian*. Jakarta: Erlangga. p.69
[8] Interview with Awal Darmawan Akhmad, SH, MH, Judge at the Blora District Court, on August 24, 2016.
[9] Mulyadi, Lilik. (2013) *Pembalikan Beban Pembuktian Tindak Pidana Korupsi.* Bandung: PT. Alumni. P.103

prosecutor and the accused or their legal advisers proved each other in court. Based on the principle of equality before the law, the defendant also has the right to submit evidence as a defense. This principle is recognized as one of the basic human rights in Article 7 of the Declaration of Human Rights in 1948 (Universal Declaration of Human Rights or UDHR).[10]

In verdict on case Number: 9 / Pid.B / 2014 / PN.Bla., The Panel of Judges in charge of the case was of the opinion that the documentary evidence submitted by the defendant was acceptable, but in the power of proof the letter evidence could not stand alone. The documentary evidence submitted by the defendant still had to be explained by other evidence, namely the mitigating witness (a de charge). This is in accordance with the theory of proof (*bewijstheorie*) adopted in the Criminal Procedure Code, namely a negative legal proof system (*negatief wettelijk bewijstheorie*).

The documentary evidence submitted by the defendant, according to the judgment of the Panel of Judges, is classified as another letter as contained in Article 187 letter d of the Criminal Procedure Code. From the point of view of evidentiary assessment, in the provisions of letter d of Article 187 of the Criminal Procedure Code it is expressly stated that other forms of letters can only be valid if they are related to the contents of other means of proof. This is odd because if evidence still has to be hung on other evidence, then that evidence has no value as evidence.[11] Formally, letter evidence in article 187 letters a, b, and c is perfect evidence and is formally made according to the formality determined by statutory regulations, but the letter in letter d still needs explanation. Even though it is not clear, this article classifies other letters as independent evidence as long as it relates to the content of other evidence.

3.2. Weaknesses and Solutions for the Use of Evidence from the Letter Submitted by the Defendant in the Criminal Case of Murder

The use of documentary evidence submitted by the defendant was inseparable from the weaknesses shown by the lack of provisions governing the use of documentary evidence submitted by the defendant. The procedure for checking letters (*bewijsvoering*) is not regulated at all in the Criminal Procedure Code. Likewise, the evidentiary strength of documentary evidence is also not mentioned in the Criminal Procedure Code.[12]

The Criminal Procedure Code does not provide any specific provisions regarding the value of the power of proof (*bewijskracht*) of letters. The value of the power of proof of letter evidence according to M. Yahya Harahap, can be viewed from a theoretical point of view as well as relating it to several evidentiary principles in the Criminal Procedure Code can be divided into 2, namely:[13]

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[10] Effendi, Tolib. (2014). *Dasar-Dasar Hukum Acara Pidana, Perkembangan dan Pembaharuannya di Indonesi.* Malang: Setara Press. p.19

[11] Irsan, Koesparmono & Armansyah. (2016). *Panduan Memahami Hukum Pembuktian dalam Hukum Perdata dan Hukum Pidana*. Bekasi: Gramata Publishing. p.266

[12] Alfitra. (2011). *Hukum Pembuktian dalam Beracara Pidana, Perdata, dan Korupsi di Indonesia*. Jakarta: Raih Asa Sukses. p.90

[13] M. Yahya Harahap I, Op.Cit., p. 309-312.

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From a formal perspective, Evidence as referred to in Article 187 letters a, b and c is evidence that has perfect formal evidentiary value, by itself the form and content of the letter:

- It is correct, unless it can be disabled with other evidence;
- All parties can no longer judge the perfection of its form and manufacture;
- Nor can it be any longer able to judge the correctness of the information poured by the competent official in it as long as the contents of the statement cannot be paralyzed by other evidence.

Thus, from a formal perspective, the contents of the information contained therein, can only be disabled by other means of evidence, either in the form of evidence of witness testimony, expert testimony or testimony of defendants.

In terms of material, Letter evidence does not have the same binding power as witness evidence, and experts have the same independent evidentiary value whose judgment depends on the judge's consideration. The judge's independence from the evidence of the letter is based on several principles, including: The principle of seeking material truth (material waarheid); Judge's belief principle; The principle of minimum limit of proof.

In connection with the implementation of the use of documentary evidence by the defendant, it is seen from the theory and in connection with the evidentiary principles set out in the Criminal Procedure Code, the weaknesses in the documentary evidence submitted by the defendant are:

From a formal perspective, The weakness is that the Criminal Procedure Code does not regulate the use of documentary evidence (*bewijsvoering*). Likewise with the assessment of the strength of evidence (*bewijskracht*) from documentary evidence. To test the evidentiary strength of documentary evidence, it is carried out in a limitative manner within the limits stipulated by law.[14]Provisions regarding documentary evidence can only be found in Article 187 KUHAP. The provisions in Article 187 letters a, b, and c of the Criminal Procedure Code are different from those in letter d. The letters a, b, and c are perfect evidence and are authentic deeds, while the letters d show letters in general that are not based on oaths of office and oaths in court that are official and tend to be private in nature.

The documentary evidence submitted by the defendant is in the category of not perfect documentary evidence, and is more directed towards ordinary letters in accordance with Article 187 letter d. The defendant was unable to use documentary evidence to have independent strength. This is based on the fact that the perfection of the value of the documentary evidence cannot change its nature into binding evidence. The judge will fully submit the assessment of the evidentiary strength of letter evidence.

The solution is that those who form the Criminal Procedure Code only feel the need to provide an explanation of the provisions stipulated in letters a, b, c, and d, in the Draft Criminal Procedure Code. The preparers of the Criminal Procedure Code also need to add rules regarding the strength of proof from documentary

[14] Bakhri, Syaiful. (2019). *Dinamika Hukum Pembuktian: Dalam Capaian Keadilan*. Depok: Rajawali Pers. p.20

evidence, to determine whether the documentary evidence is acceptable or not.[15] To find the material truth, judges must act wisely and wisely, and be given the freedom to find law *(rechtsvinding)* of the cases they face.

In terms of material, Letter evidence does not have binding power against the judge the same as witness testimony or expert testimony, this is based on several principles, among others: (1) The principle of seeking material truth; The weakness of documentary evidence according to this principle is that the process of examining a criminal case is to seek material truth (material *waarheid*), not looking for formal truth. The judge is free to judge the truth contained in the documentary evidence.[16]Likewise in assessing the strength of evidence from the documentary evidence submitted by the defendant. Although from a formal perspective, the documentary evidence is correct, but the documentary evidence can still be removed in order to achieve and realize material truth.

From the consideration of the verdict, the Panel of Judges is of the opinion that for criminal cases there is no hierarchy in the evidence, testimony has the main place. Letters or electronic documents submitted by the defendant can only be used as evidence if they are related to the criminal act committed. However, the correctness of the contents of the letter and other written evidence must also be proven.

The solution, the judge must be really careful in assessing and considering the strength of evidence he found during the trial, be it witness testimony or letter. The truth must be tested by means of and with the strength of evidence attached to every evidence. Judges must refer to the principle of *audi et alteram partem*, namely the principle where in the trial process, the judge is obliged to listen to all parties in this case as a defense by the defendant through the evidence he presents. Material truth can be obtained not only from witnesses, but from these letters to find out the truth that the defendant did not commit a crime.

(2) The principle of the judge's conviction, The weakness is that this principle is contained in the provisions of Article 183 of the Criminal Procedure Code which is closely related to the teaching of the proof system (*bewijstheorie*), namely the negative legal proof system (*negatief wettelijk bewijstheorie*). According to this principle, a judge in imposing a sentence on a defendant is only based on conviction on the basis of two valid evidence. Judges have complete freedom in assessing every power of proof and judges can paralyze all the powers of proof that have been obtained at trial.[17] Likewise with the documentary evidence submitted by the defendant.

In deciding cases, judges must be based on valid evidence and regulated in the Criminal Procedure Code and be able to convince the judge. Sometimes in trials, sometimes the judge only trusted the evidence presented by the public prosecutor without considering the evidence presented by the defendant. This

[15] Interview with Zainudin, SH, MH and Sugiyanto, SH, Legal Counsel for the Defendant, on June 13, 2017.
[16] Al-Khawarizmi, Damang Averroes. (2011). *Kekuatan Pembuktian Alat Bukti Surat*. http://www.negarahukum.com/hukum/kekuatan-pembuktian-alat-bukti-surat.html, accessed on 19 September 2020.
[17] Kartanegara, Satochid. (1992). *Hukum Pembuktian dalam Acara Perdat.* Bandung: Alumni. p.26

could injure the principle of equality before the law, which would cause harm to the position of the defendant, if in fact the defendant was not guilty of a criminal act.

The solution is that the judge must test the proving strength of the evidence with his conscience, and must have conviction, with the evidence presented by either the public prosecutor or the defendant or his legal adviser. Judges can use the principle of In *Dubio Pro Reo*, namely if there is doubt as to whether the defendant is guilty or not, then it is best to give something that is favorable to the defendant, namely being freed from the charges. If the evidence presented by the public prosecutor is not strong enough, and the judge has not yet obtained confidence from the evidence, the judge can use the principle of in *Dubio Pro Reo*. With a conscience the judge can also believe in the strength of the evidence of the defendant and the legal advisor.

(3) The principle of minimum limit of proof, The weakness is, documentary evidence is unable to have independent evidentiary power, still requires support from other evidence, and the nature of its formal perfection must comply with the principle of minimum limit of proof (*bewijs minimmum*) stipulated in Article 183 KUHAP.[18]The documentary evidence submitted by the defendant did not have binding force against the judge. To assess the strength of proof of the letter, the judge is free. The judge can ignore the documentary evidence submitted by the defendant, because it is not supported by witnesses who can explain the whereabouts of the Defendant at the time the crime occurred.

Criminal Procedure Code does not regulate the evidentiary power of other letters (Article 187 letter d) because they do not have weight as evidence, they only regulate official documents. The application of another letter as a form of documentary evidence looks odd, because if a documentary evidence is hung with other evidence, that is, if it has a relationship between the contents of other evidence, so it does not appear to have evidentiary value. It even tends to be evidence of clues.

The solution is that the evidence in Article 184 paragraph (1) of the Criminal Procedure Code stands parallel to one another, except for indications because they are dependent on other evidence. Letter evidence should not be an assessor, but it must be independent. In its implementation in court, the judge chose to use evidence that is an assessor in nature, and it would be nice if the evidence of guidance was used as a last resort when there was no other evidence. Regarding documentary evidence which is related to a criminal act, it should not be considered as a mere assessor, because precisely this evidence is very important in strengthening a judge's conviction and must be able to stand alone as a valid evidence as stated in the Criminal Procedure Code.

4. Conclusion

Using Letter evidence in a criminal case is very necessary because of the

[18] Luntung, Geraldo Angelo. *"Surat Sebagai Alat Bukti Menurut Kitab Undang-Undang Hukum Acara Pidana"*. Letters as Evidence According to the Criminal Procedure Code", Lex Crimen Journal, Vol. VII, No. 5. Accessed on July, 2018. Manado. p. 62

limited knowledge and memory possessed by everyone, so documentary evidence is very necessary, and must be given a careful assessment, in order to achieve true truth without neglecting the human rights of the accused. To be able to support law enforcement, especially in the evidentiary process, documentary evidence must truly be recognized as valid and accountable, so that later it does not cause new problems, thus helping law enforcement officials in uncovering cases in court.

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