

Legal Review of Reconstruction by Police Investigators with Certain Criminal Parameters

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Abstract: *The purpose of this research is to know and analyze legal policy of reconstruction efforts by police investigators for certain criminal offenses. In this writing, the author uses a normative legal method with research specifications in the form of descriptive analysis. Law enforcement efforts, the police are the leading agency that deals directly with lawbreakers, therefore adequate capabilities and personnel are needed. One of the capabilities that must be possessed by Polri investigators is to conduct police identification, police medicine, police laboratories and police psychology which are useful for uncovering a criminal case. This is very useful for collecting evidence for the sake of proof. In their activities of collecting evidence, Polri investigators use identification techniques that do not conflict with the law and have become a habit in the police environment in uncovering a criminal event, these techniques are regulated in the Field Guidelines and Minimum Guidelines for the Criminal Investigation Process, namely the Decree of the Chief of Police No. Pol: Skep/1205/IX/2000 concerning the Revision of the Collection of Guidelines and Technical Instructions for the Criminal Investigation Process, dated September 11, 2000. Generally, reconstruction is held for criminal acts that result in the loss of life, such as in cases of murder or in cases of serious assault and this reconstruction is usually carried out at the scene of the crime or in another place if the scene of the crime is deemed unsafe or unsuitable for carrying out reconstruction.*

Keywords: *Crime; investigators; Reconstruction;*

1. Introduction

Indonesia is a country based on law therefore it is only right to always uphold justice and order in the life of the nation and state. To achieve this, rules or provisions are needed which are made by the authorities with the aim of regulating, protecting, maintaining and preserving the lives of its

citizens.¹Violation of the rules or provisions, then of course the solution is based on positive laws that have been made. Positive law itself is a law that applies as a law for society at a certain time and place.

The implementation of a state of law in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia absolutely requires a set of laws that uphold human rights and guarantee all the rights of its citizens, with equal standing in law and government and are required to uphold the law and government without exception. This means that every Indonesian citizen without exception must uphold the law. In the sense that everything must be based on or sourced from the law, where every criminal act that occurs should be processed through legal channels so that the law is seen as the only means for resolving a criminal act.²In line with these provisions, one of the important principles of the rule of law is the guarantee of equality for everyone before the law (equality before the law). Therefore, everyone has the right to recognition, guarantee, protection and certainty of fair law and equal recognition before the law.

In law enforcement efforts, the police are the leading agency that deals directly with lawbreakers, therefore adequate capabilities and personnel are needed. One of the capabilities that must be possessed by Polri investigators is to conduct police identification, police medicine, police laboratories and police psychology which are useful for uncovering a criminal case. This is very useful for collecting evidence for the sake of proof.

In their activities of collecting evidence, the National Police investigators use identification techniques that do not conflict with the law and have become customary in the police environment in uncovering a criminal incident, these techniques are regulated in the Field Guidelines and Minimum Guidelines for the Criminal Investigation Process, namely the Decree of the Chief of Police No. Pol: Skep/1205/IX/2000 concerning the Revision of the Collection of Technical Instructions and Technical Guidelines for the Criminal Investigation Process, dated September 11, 2000.

The techniques are: (1) Interview, (2) Interrogation, (3) Confrontation, and (4) Reconstruction. The Chief of Police's Decree is still used as the implementer of Law No. 2 of 2002 because the Decree has not been updated since the enactment of Law No. 2 of 2002.

¹Sri Praptini, Sri Kusriyah, and Aryani Witasari, (2019), Constitution and Constitutionalism of Indonesia, Journal of Legal Sovereignty: Volume 2 (1), p 7

²Tafta Aji Prihandono and Sri Kusriyah, (2018), Awareness on Constitutional Rights of Citizens and Form of Protection of Constitutional Rights of Citizens in Indonesia, Jurnal Daulat Hukum, 1 (4), p 1003

The implementation of reconstruction in addition to having to be carried out at the scene of the crime (TKP), or in another place if conditions do not permit, must also be made a report called the Reconstruction Report which is equipped with photocopies of the scenes carried out during the reconstruction. These photos are an inseparable part of the reconstruction report.³

This is possible because the results of the reconstruction are then poured into the Reconstruction Report (BAR) which is one of the components of the case file which will later be submitted to the Prosecutor's Office, and the Prosecutor's Office will carry out the prosecution by first submitting it to the Court to be tried with a regular examination procedure.

Reconstruction also helps the prosecutor's task to strengthen his evidence. Likewise, for the judge, it will also increase his confidence in deciding a case. Judges in deciding a case must be careful, precise and mature in assessing and considering the value of evidence.⁴

Based on the description of the background of the selection of legal material as described above, the researcher is interested in conducting research with research objectives for know and analyze the legal policy of police investigators' reconstruction efforts for certain criminal offenses.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and other documents related to this study.

3. Results And Discussion

3.1 Reconstruction

In clarifying a crime, a technique of examining suspects and witnesses is needed, the purpose of which is as an elaboration of the implementation instructions regarding the criminal investigation process, and in the implementation of the examination of suspects and witnesses in front of investigators, they have technically done it correctly in accordance with applicable laws and regulations. One of the techniques of examining suspects and witnesses as stated above is by conducting a reconstruction in order to carry out a criminal investigation. Where the term reconstruction in the field of investigation is starting to be widely known by the public through various coverage in the mass media.

³ H. Hamrat Hamid and Harun M Husein, (1992). Discussion of Criminal Procedure Code Problems in the Field of Investigation, Jakarta: Sinar Grafika, p 124

⁴Yahya Harahap, (2002), Discussion of Problems and Application of the Criminal Procedure Code: Court Hearing Examination, Appeal, Cassation, and Judicial Review, Sinar Grafika, Jakarta, p 273.

The definition of reconstruction is a re-enactment of a particular crime in the context of an investigation attended by investigators, public prosecutors, suspects and also witnesses to clarify a crime that has occurred. Reconstruction is "making a picture or re-enactment of how a crime occurred in a place and the consequences it caused."⁵

The purpose of conducting a reconstruction is to provide a picture of the occurrence of a crime by re-enacting how the suspect committed the crime with the aim of convincing investigators more about the truth of the statements from the suspect or witnesses. The reconstruction must be carried out at the scene of the crime, unless circumstances dictate otherwise, and for its implementation, a reconstruction report must also be made which is equipped with photos of the scenes carried out during the reconstruction. These photos are an integral part of the reconstruction report.

For more details, here will be explained about the types of reconstruction itself. Based on what has been commonly practiced by investigators, we know several types of reconstruction, including:

1. Physical Reconstruction

Based on the information or testimonies obtained from witness statements, investigators will conduct a reconstruction to find out the truth of the events that have occurred by paying attention to the atmosphere and weather or time and objects that were touched, pushed aside, destroyed and so on. For example, where an object is located and how the incident occurred and what the actions and reactions were at that time.

The results of the reconstruction allow investigators to draw conclusions, compare them with the theory used before the reconstruction, and then provide an answer as to whether the theory must always be supported by existing evidence and followed by reasonable reasons and not deviate from the provisions of the law.

2. Mental Reconstruction

Expressing the results of mental reconstruction can be used to draw conclusions about the occurrence of a crime, concerning the psyche needs to be expressed in the mental reconstruction. In the case of murder for example, whether the perpetrator and victim have a family or friendship relationship, whether there was a previous argument, and whether in a state of drunkenness or anger or revenge or jealousy and also perhaps whether the perpetrator is classified as sadistic or sexually disturbed.

⁵Rustam, (2015), Position of Reconstruction/Re-enactment in Proving Criminal Cases (Study of Handling Criminal Cases in the Jurisdiction of Padang District Court), Jurnal Dimensi, 4 (2). p 4

It is stated above that the reconstruction aims to reveal the truth by matching the existing evidence and also matching the witness's statement. Even if the suspect admits his actions, it should be matched with his confession, on the other hand, if the suspect denies it, then the reconstruction will be a test of whether his denial is justified or not.

3.2 Legal Policy on Reconstruction Efforts by Police Investigators for Certain Criminal Offenses

The nature of criminal law is to punish people who are clearly guilty and proven to have committed the crime. For this reason, investigators must be very observant and careful in making case files so that the perpetrator cannot escape the law. One of the contents of the case file is the Examination Report (BAP). The Examination Report (BAP) according to Article 75 paragraph (1) of Law Number 8 of 1981 is made for every action regarding:

- a. examination of suspects;
- b. arrest;
- c. detention;
- d. search;
- e. household income;
- f. confiscation of objects;
- g. letter checking;
- h. witness examination;
- i. on-scene inspection;
- j. implementation of court decisions and rulings;
- k. implementation of other actions in accordance with the provisions of this law.

One of the methods of examining suspects that can be used by investigators is reconstruction. Reconstruction of criminal cases as an examination technique in the investigation process carried out at the preliminary examination stage by police investigators. This is stated in Chapter III on Implementation, number 8.3. d Criminal Investigation Guidelines Decree of the Chief of Police No. Pol.Skep/1205/IX/2000 concerning the Revision of the Collection of Guidelines and Technical Instructions for the Criminal Investigation Process which determines:

The method of examining suspects can use the following techniques:

- (1) Interview;
- (2) Interrogation;
- (3) Confrontation; and

(4) Reconstruction.⁶

The function of the reconstruction is to further ensure the role of each suspect so as to clarify the crime that occurred and to further convince the prosecutor. The function of the reconstruction is also to ensure that the suspect's statement contained in the Investigation Report (BAP) is true. Pure reconstruction proves the contents of the Investigation Report (BAP) without changing it. Reconstruction for the victim to know how the suspect committed the crime against the victim. Where reconstruction is to collect puzzles of clues from witness statements, evidence and suspect statements. So that it makes it easier for the prosecutor to compile the indictment.

In relation to reconstruction, investigators do not have a legal basis that is specifically written in the law to do so. However, investigators, due to their obligations, have the authority stated in Article 7 paragraph (1) of the Criminal Procedure Code, including:

1. Receive a report or complaint from someone about a criminal act;
2. Take first action at the scene;
3. Ordering a suspect to stop and receiving the suspect's identification card;
4. Carrying out arrests, detentions, searches and seizures;
5. Conduct inspections and confiscation of letters;
6. Taking fingerprints and photographing a person;
7. Summoning people to be heard and examined as suspects or witnesses;
8. Bringing in the necessary experts in connection with the case examination;
9. Conducting a cessation of investigation;
10. Carry out other legally responsible actions.

Based on the contents of the article above, we can find the legal basis for reconstruction. Indeed, this is not expressly regulated in the Criminal Procedure Code, but in general it is implied in Article 7 paragraph (1) letter j which reads:

"take other actions according to the law that are responsible".

"Other actions" as stated above, referring to the explanation of the Criminal Procedure Code, can be carried out on the following conditions:

- a. does not conflict with any legal regulations;
- b. in accordance with legal obligations that require official action to be taken;
- c. such action must be appropriate and reasonable and fall within the scope of his/her position;

⁶National Police Headquarters, (1987), Collection of Technical Instructions and Technical Guidelines on the Criminal Investigation Process, STIK Library

- d. based on appropriate considerations based on compelling circumstances;
- e. respect human rights.

Based on several things above, reconstruction has a clear legal basis and can indeed be carried out for the purposes of investigation and in addition, in certain criminal cases, there is a requirement for investigators to carry out a reconstruction.

Generally, reconstruction is held for criminal acts that result in the loss of life such as in cases of murder or in cases of serious assault and this reconstruction is usually carried out at the scene of the crime (TKP) or in another place if the scene of the crime (TKP) is considered unsafe or unsuitable for carrying out reconstruction. This reconstruction is necessary because as we know there is a longtime span for examining cases in court, so this reconstruction can help law enforcement to obtain a picture of cases that occurred in the past, as one of the easiest ways to obtain a picture of how a person or several suspects committed a crime against their victims. The guidelines for implementing the Criminal Procedure Code explain that the purpose of criminal procedure law is to seek and obtain or at least approach the material truth, namely the most complete truth of a criminal case by applying the provisions of criminal procedure law honestly and accurately, with the aim of finding out who the perpetrators are who can be charged with committing a violation of the law, and then requesting an examination and decision from the court to find out whether it is proven that a crime has been committed and whether the person accused can be blamed. The main tasks of criminal procedural law support each other, because in order to implement a judge's decision, the decision issued by the judge must truly reflect the justice of the criminal event that occurred, and in order to achieve this justice, law enforcement officers must seek strong evidence that reflects the real truth of a criminal act.

Reconstruction of criminal cases as a technique used by the authorities in the investigation process is not explicitly or openly regulated in the Criminal Procedure Code, the investigation process in the Criminal Procedure Code only regulates general matters that include the authority of investigators such as in Article 7 letter e which states that investigators can conduct examinations regarding examinations conducted by investigators, then Article 112 of the Criminal Procedure Code gives investigators the authority to summon suspects and witnesses who are considered necessary to be examined by issuing a valid summons first. Furthermore, Article 117 of the Criminal Procedure Code states that statements from suspects or witnesses to investigators are given without pressure from anyone and/or in any form. However, regarding what actions are taken by investigators during the examination process, there is no detailed

regulation in the Criminal Procedure Code, including the examination techniques carried out by investigators.⁷

The regulations for the reconstruction of criminal cases carried out in the investigation process in the Criminal Procedure Code are further explained in Article 75 paragraph (1) letter a, letter h, letter k, paragraph (2) and paragraph (3) which implicitly or impliedly regulate the minutes which can be used by investigators to carry out the reconstruction, namely:

Article 75 paragraph (1). Minutes are created for each action regarding:

- a) Examination of suspects;
- b) Examination of witnesses; and
- c) Implementation of other actions in accordance with the provisions of this law.

In this case, the implementation of other actions referred to in Article 75 paragraph (1) letter k of the Criminal Procedure Code above is included in the reconstruction carried out by the investigator. Article 75 (2). The minutes are made by the official concerned in carrying out the actions referred to in paragraph (1) and are made under the power of the oath of office.

Every investigator in carrying out crime scene processing activities must refer to the implementation instructions (JUKLAK) of the Republic of Indonesia Police with police number 04/1/1982 which contains the following:

- a. Correct and professional processing of the crime scene (TKP) in accordance with the work order that has been adjusted to the JUKLAK and JUKNIS;
- b. General Observations;
- c. General shooting;
- d. Close-up photography of items found at the crime scene;
- e. Taking evidence related to the crime scene carefully and correctly;
- f. Conducting a crime scene investigation which aims to narrow down the investigation scope of the crime scene processing unit to solve the case and find the perpetrator;
- g. Seek information from witnesses who truly understand the criminal incident;
- h. Conducting interrogations of victims, perpetrators and their families;
- i. Immediately make an examination report (BAP).⁸

After the crime scene processing, a case reconstruction is carried out. Criminal reconstruction, which is then familiarly referred to as a crime reconstruction

⁷Karel Antonius. Cs. (2015). The Role of Reconstruction in Criminal Cases. Paper, Postgraduate Law (S2) Tadulako University Palu, p 11

⁸Merry Chrystin Silaen, (2015), The Existence of Reconstruction in Proving Criminal Cases, e- Jurnal Katalogis, 3 (10), p 199

scene, is a new area in criminal law studies that later became popular in the 1990s. Reconstruction involves the use of scientific methods, logical reasoning, sources of information on people, criminology and victimology, and experience or skills to interpret a criminal event.

Reconstruction was initially known in Anglo-Saxon countries which was then followed by other countries. Reconstruction of criminal cases in Anglo-Saxon countries has a different meaning from the reenactment of a criminal act. The difference is seen in the implementation process, the reenactment of a criminal act is generally carried out in front of a court hearing witnessed by a jury, judge, the suspect's lawyer and the prosecutor while the reconstruction of criminal cases is carried out by the police and can also be carried out by detectives by directly reenacting at the scene of the crime.

Before conducting the reconstruction, the investigators had reported first to the leadership. The first notification to the Head of Criminal Investigation Unit, then other leaders, the Chief of Police, Deputy Chief of Police for information. During the reconstruction, many parties from the Police were directly involved, such as the Bimas Unit (community guidance) to ask permission from respected community leaders and the local RT as well as provide direction and guidance to the community so that they can condition their citizens not to disrupt the implementation of the reconstruction. The Intel Unit and Sabhara Unit to secure disturbances from residents or other parties/infiltrators who could disrupt the implementation of the reconstruction.⁹

In conducting the reconstruction, the investigator first directs the reconstruction of the crime scenes according to the information obtained from the suspect and witnesses. After that, the investigator conducts a crime scene investigation to find a bright spot of the picture of the actual case, making it easier for the investigator to install the Police Line before taking documentation, photos at the scene of the crime.

4. Conclusion

Every investigator in conducting crime scene processing activities still refers to the implementation instructions (JUKLAK) of the Republic of Indonesia Police with police number 04/1/1982, namely with steps in the form of processing the crime scene (TKP) correctly and professionally in accordance with the sequence of work procedures that have been adjusted to JUKLAK and JUKNIS; General Observation; General photography; Close-up photography of the found items at the crime scene; Taking evidence related to the crime scene carefully and

⁹Nisa Fadhilah, (2022), Reconstruction Process in Efforts to Uncover Criminal Acts, Journal of Law, Legalita, 4, (2), p 230

correctly; Conducting a crime scene processing that aims to narrow the investigation space of the crime scene processing unit to solve the case and find the perpetrator; Seeking information from witnesses who really understand the criminal incident; Interrogating the victim, perpetrator and their family; Immediately making a report of the examination (BAP).

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