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THE POWER OF EVIDENCE DEVICE IN CRIMINAL LAW IN THE CASE OF JESSICA'S CYANIDE COFFEE

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ABSTRACT

Background: Evidence in criminal law is the most important thing in the judicial process. In the case of Jessica Kumala Wongso, there is electronic evidence device in the form of CCTV footage. It is necessary to conduct judicial review against the law regarding CCTV must be installed by the authorities.

Aim: This study aims to analyze the validity and position of CCTV evidence device in the criminal proceedings.

Method: This study used normative juridical writing by using three problem approaches, namely the case approach, the conceptual approach, and the statute approach.

Result: The result of the study showed that the panel of judges in the cyanide coffee case still used CCTV as valid evidence, even though the Constitutional Court has declared that CCTV was not valid and could not be used as valid evidence in criminal justice process in Indonesia.

Conclusion: Electronic evidence device could be used in the world of criminal law enforcement in Indonesia, because it still used interpretation in accordance with the Article 5 section (1) and section (2) of the Electronic Information and Transaction Law.

INTRODUCTION

Law is used as a tool for social control, which is a process of influencing people to behave in accordance with society's expectation. This legal control is carried out in various ways and through official bodies which established by the state (Niyobuhungiro, 2019). In an increasingly advanced era with various innovations, this finding does not cover the rampant occurrence of crime due to the difficulty of looking for job and the large number of unemployment in this state (Prihandono and Relig, 2019).

To create a high security system, agencies or public spaces must be supported by a large number of security officers and the security technology used. This is because the perpetrators of theft are getting smarter from time to time. If there are more security officers, but the perpetrators of theft are getting smarter in disguising themselves and their belongings, the security officers will no longer be effective. The society needs to be more vigilant about this by using electronic devices such as CCTV so that it can make it easier for both victim and law enforcement officer (Khanafi and Wahyuningsih, 2018).

CCTV (Closed Circuit Television) is a digital video camera device that is used to send signals to the monitor screen in a certain room or place. This has the aim of being able to monitor the situation and condition of a certain place, so that it can prevent the occurrence of crime or can be used as evidence of a crime that has occurred. Regarding CCTV evidence device, it clearly includes in formal criminal law or criminal procedural law. Previously, criminal procedural law was a set of regulations with a narrower scope, which is only starting to seek the truth, investigation, and ending with the criminal execution by the prosecutor (Hariyadi et al., n.d.).

With the Criminal Procedure Code, certainly it can provide more legal order because state officials cannot take arbitrary actions because of what arrangements can be allowed in carrying out an action related to the judicial process from investigation to legal remedy (Atsar, 2019). Based on this background, this study aims to analyze the validity and position of CCTV evidence device in the criminal proceeding. The theoretical implication of this study is to contribute knowledge to the society and practitioners or law enforcement officials regarding the issue of the validity of CCTV evidence device in the future.

RESEARCH METHOD

This study used normative juridical writing by using three problem approaches, namely the case approach, the conceptual approach, and the statute approach. The primary legal material of this study was Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 19 of 2016 concerning Electronic Information and Transaction, Constitutional Court Decision Number 20/PUU-XIV/2016 concerning Information and Electronic Transaction, and Law Number 20 of 2001 concerning the Eradication of Corruption. The subject of this research was the position of CCTV as evidence device in the Jessica Kumala Wongso case of premeditated murder using Cyanide (Susan and Budirahayu, 2018).

Meanwhile, the sources of secondary legal material, starting from the opinions of legal scholars to criminal law experts, that were obtained from news sources, both electronic media, internet media, and printed media related to the Electronic Information and Transaction Law (Widjaja et al., 2019). In this case, the legal material that has been collected and inventoried would be analyzed by conducting a study through a literature study so that later an

answer would be obtained to the formulation of the problem and the solution to the problem (Harymawan and Nowland, 2016).

RESULT AND DISCUSSION

Position of CCTV Footage in Criminal Act Evidence

There were many ways of proving a case to provide clear picture of a series of incidents that actually occurred at the real crime scene, based on that the result of CCTV footage could provide a real picture of incident in a structured place through the picture displayed from the footage without any engineering and certainly this picture could tell a story and provide information in this case regarding an evidence in the criminal proceeding (Prasetya and Soponyono, 2019).

Considering the recording that carried out without procedures stipulated by the Law was not justified so that there was no violation of human rights which guaranteed by the 1945 Constitution. Therefore, the Court would consider the phrase "electronic information and/ or electronic documents" in article 5 section (1) and section (2), Article 44 letter b of the Electronic Information and Transaction Law contradicted to the 1945 Constitution as long as it was not interpreted, "electronic information and/ or electronic documents which obtained in accordance with applicable statute provision and/ or carried out in order to be the law enforcement upon the request of the Police, the Attorney General's Office, the Corruption Eradication Commission and/ or other law enforcement institutions (Maerani and Nuridin, 2018).

There were two categories of human right, namely the right that could be set aside and the right that could not be set aside. However, this right could not be set aside if it was true that the law has regulated to be deviated as long as in some circumstances, certain provision relating to legal interests and this was permitted by Article 28j section (2) of the 1945 Constitution. Furthermore, even so in the law enforcement, in terms of granting authority, it must also be limited so that the apparatus did not abuse it arbitrarily. So, from the explanation, the prohibition exception regarding the recording was permitted as long as it was carried out by law enforcement officials for law enforcement (Prakoso and Setyaningati, 2018).

CCTV Position as Evidence Device for the Cyanide Coffee Case

The death of Wayan Mirna Salihin, a 27-year-old woman, was declared poisoned by a cyanide compound that contained in a glass of Vietnamese iced coffee which she drank when she met her two colleagues, Jessica Kumala Wongso and Hani at Olivier Restaurant, Grand Indonesia Shopping Town, Jakarta. The *Polda Metro Jaya* (Greater Jakarta Metropolitan Regional Police) authority who took over the case of Mirna's death from the *Polres Metro Jakarta Pusat* (Central Jakarta Metro Police) stated that the cyanide that entered Mirna's body could chemically erode organ tissues. The main cause of Mirna's death was not unexplained stomach damage, but suspected corrosive substances. The forensic team who performed an autopsy on Mirna's body at the Indonesian National Police Hospital, Jakarta, confirmed that Mirna's

stomach was damaged. They knew this corrosive substance, among others, from Mirna's reaction after tasting coffee, which was the frothy mouth and the body stiffened (Amalia and Lestari, 2016).

Based on the investigation, the police stated that Jessica came to Olivier's Restaurant earlier than Mirna and Hani. Investigator said it was Jessica who ordered two cocktails and Vietnamese iced coffee. A week later, the police conducted a reconstruction process based on the surveillance camera footage belonging to the restaurant management which had confiscated by them. Before determining the suspect in the case of Mirna, the police exposed the result of their investigation twice to the DKI Jakarta High Prosecutor's Office. After the second exposure, the police immediately held the case proceedings until midnight. Friday (29/1), at 23.00 WIB, investigator determined Jessica as a suspect in the murder case of Mirna (Manshur et al., 2019).

As in the case of Jessica Wongso with the register number 498K/PID/2017, the death of Wayan Mirna Salihin was declared poisoned by cyanide compound that contained in a glass of Vietnamese iced coffee that she drank when she met her two colleagues, then the police carried out pre-reconstruction. The police brought a number of pieces of evidence from Olivier's Restaurant for the purpose of investigation, among others, surveillance camera (CCTV). Without any direct evidence that pointed to Jessica, certainly CCTV was the last option even though the recording also did not directly point to Jessica who immediately committed the murder (Hatta, 2018).

But in fact, the panel of judges in the case of cyanide coffee continued to use CCTV as valid evidence, even though the Constitutional Court had declared the CCTV was not valid and could not be used as valid evidence in the criminal justice process in Indonesia. Thus, the electronic evidence device which used in the world of criminal law enforcement in Indonesia still used interpretation in accordance with the article 5 section (1) and section (2) of the Electronic Information and Transaction Law and article 26A of Law Number 20 of 2001 concerning the Amendment to Law Number 39 of 1999 concerning Corruption Eradication before being tested in the Constitutional Court (Maerani and Nuridin, 2018).

Legal Remedy against Jessica's Case

The enactment of legal institution for judicial review was based on Supreme Court regulation No. 1 of 1980 which was applied both for criminal cases and civil cases. This was seen as a juridical solution to accommodate various problems for the emergence of mistakes or errors from the justice apparatus, as in the fact in the case which experienced by "Sengkon and Karta" (Atsar, 2019).

There was one thing blocking up which was the evidence regarding CCTV, in which in the defense (pledoi) filed by Jessica's attorney, stated that CCTV was not considered as invalid evidence. This was said no because it referred to the

decision of the Constitutional Court on the suit for judicial review of former chief of People's Representative Council Setya Novanto on September 7, 2016 regarding wiretapping or recording which was used as evidence in the investigation, prosecution and examination of a case in the Decision Number 20/PUU-XIV/2016, which was essentially "The applicant's plea is accepted in part as long as it is not interpreted especially the phrase electronic information and or electronic documents as evidence device of law enforcement upon the request of the police and other law enforcement institutions as regulated in the Electronic Information and Transaction Law" (Maerani and Nuridin, 2018).

The problem was whether what was meant by the phrase "upon the request" above was a request for installation/ recording using CCTV or a request for CCTV camera footage. This was sure to be something debatable. If what was meant was a request for installation/ recording CCTV camera, then all CCTV cameras were installed in malls, supermarkets, minimarkets, highways, residential complexes, government agencies, ATM machines, etc must be upon the request of the police and/ or other law enforcers if it would be used as legal evidence device at the court of law (Prakoso and Setyaningati, 2018). Therefore, if this evidence device was considered invalid, so far a number of expert witnesses that presented by the public prosecutor in the case of Mirna's death have given testimony based on the display of CCTV footage from Olivier Restaurant. Then, all the testimonies of expert witnesses were also invalid, because their testimony was based on the evidence device that was no longer legally valid (Hariyadi et al., n.d.).

However, as long as the revised Electronic Information and Transaction Law has not been created, CCTV camera footage could be used as legal evidence device or at least could be used as supporting evidence in the court of law as long as the taking and/ or transfer of CCTV camera footage was carried out according to the procedure. , completed with minutes of taking/ transfer, carried out by authorized parties, the information contained in CCTV camera footage could be accessed, displayed, guaranteed its wholeness, could be accounted for and carried out in order to be the law enforcement upon the request of the police, prosecutor, and/ or other law enforcement institutions that stipulated based on the Law (Ruegg et al., 2004).

However, such as other evidence in court of law, the judge could assess the evidence filed by the public prosecutor. The judge could declare whether the evidence was valid or not, used or set aside. In other words, in the consideration of making a decision, the judge could use evidence or set it aside according to his judgment (Lynch, 2008).

Legal Consequences of the Constitutional Court Decision for Case Number 20/PUU-XIV/2016

Starting from the applicant filing a judicial review because she felt aggrieved by the provision of the two articles, namely Article 5 section 1 and section 2 and Article 44 letter b of the Electronic Information and Transaction Law and Article 26 A of the Corruption Eradication Commission Law. From there the

applicant in her lawsuit asked the Constitutional Court interpreted in more detail the validity of electronic documents used as evidence without any request from the authorities (Enggarsasi and Sa'diyah, 2019).

The Constitutional Court accepted the part of the lawsuit of judicial review filed by the applicant, related to wiretapping or recording which was used as evidence in investigation, prosecution and examination. The Constitutional Court said that there were incomplete regulations related to wiretapping. Therefore, the lawsuit was legally grounded. Furthermore, the reason for the Chief Justice of the Constitutional Court to accept the part of the lawsuit of judicial review was because the footage met the elements of violating the 1945 Constitution as long as the phrase electronic information and/ or electronic document was used as evidence. The Chief Judge added, Article 5 section 1 and section 2 and Article 44 letter b in the Electronic Information and Transaction Law, did not have binding legal force as long as it was not interpreted, especially the phrase information and electronic document as evidence (Prasetya and Soponyono, 2019).

Study of the Constitutional Court Decision Regarding CCTV

The authority of the Constitutional Court explicitly aimed to provide legal recourse to the related cases. If the Constitutional Court argued that if the plea to be able to test the Law was from plea with reason, then the decision of the Constitutional Court stated that the plea was granted. Regarding the plea that was granted, the Constitutional Court conducted an examination to determine whether the Law was contradictory or not. From the result of the decision case number 20/PUU-XIV/2016, the revised law was issued, namely Law Number 19 of 2016. This was because the Constitutional Court through its decision could state that the formulation material of the Law had no legal force because it was contrary to the Constitution.

This Law had legal consequences which caused by the Constitutional Court's decision, so an important point related to Jessica's case was that the evidence device in accordance with the Court's decision electronic information (including CCTV camera footage) did not have binding legal force as long as it was not interpreted, especially the phrase "Electronic Information and/ or Electronic Documents" as evidence device was carried out in order to be law enforcement upon the request of the police, prosecutor, and/ or other law enforcement institutions that stipulated based on the Law. This meant that CCTV camera footage could become valid evidence if it was carried out in order to be law enforcement upon the request of the police, prosecutor, and/ or other law enforcement institutions that stipulated based on the Law (Wahana, 2018).

Novum or New Condition Due to the Constitutional Court Decision

Starting from the case to be discussed, the reason that could be used as the basis to underlie the request for judicial review was new condition. The condition was new if it had characteristic and quality that gave rise to strong suspicion. In this case what was new was not the condition but when it was

found (Wallad, 2020). This new condition was found and known at the time the trial was taking place, so that it could be the factor in deciding that the decision declared the prosecution's demand was unacceptable. This new condition did not mean that new evidence must always be found, but it could be due to misleading condition (Maerani and Nuridin, 2018).

Misleading condition could occur because of the evidence by the investigator, public prosecutor, or even by the judge himself when examining a case, so that the real condition was not revealed. In the case of Jessica Kumala Wongo, there was a Constitutional Court decision which resulted in changes to the law or Law which had direct implication for the CCTV evidence device used by the public prosecutor (Manshur et al., 2019).

The court has interpreted a norm which clearly violated the will of the legislators regarding the purpose of establishing the norm. In this case the judge considered that CCTV was justified or accepted, so that causing a clear legal norm to contradict the will of the legislators. Therefore, if this was true it was considered wrong then it could be considered as misguided judiciary. Because misguided judiciary was the activity of adjudicating by examining cases or people on the trial to decide which were carried out with wrong procedures, wrongly implementing the rules, wrong legal consideration - resulting in decision that was detrimental to the people on the trial (Amalia and Lestari, 2016).

According to the opinion of criminal procedural law expert from the Faculty of Law, Universitas Indonesia, T. Nasrullah, that changes to the law or Law could be said to be a new condition (*Novum*) then "People used to be convicted because of a criminal act, then turned into decriminalization, that criminal act is no longer a criminal act". He could file a judicial review with the reason of decriminalizing his act. The law must always provide benefits for a criminal, it should not make his condition more difficult. Luhut MP Pangaribuan also argued by confirming that the Constitutional Court's decision could be used as *Novum* in submission of judicial review because the Constitutional Court Decision could be categorized as a new condition as regulated in Article 263 section (2) of the Criminal Procedure Code (Fitri et al., 2019).

CONCLUSION

CCTV was an extension of evidence that could be categorized into valid evidence in the form of clue, then expanded again with the Law on Electronic Information and Transaction due to the development of the times plus CCTV was also installed in public places so there was no need to specifically request permission or be installed by law enforcement officials or authorized officials because this CCTV footage for the public, it was not only made because of this case but to monitor the café based on the legal procedures as regulated by Law and must be carried out by law enforcement agencies so that there was no violation of human rights in the form of a person's privacy right.

Judicial review was sufficient as a right of a convict or the convict's family. Because the convict's interest here was greatest due to the possibility of a judge's mistake. Furthermore with the new laws and regulations, it could be categorized as *novum* or a new condition as a requirement for filing a judicial review by the convict.

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