Asliani Harahap

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Use of Instructional Evidence Tools by the Public Prosecutor in the Criminal Prosecution Process

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Abstract

Instructional evidence is used to increase the judge's conviction that the defendant is guilty or not. Guidance is obtained from witness testimony, letters as well as from statements of the defendant which are put together, then put together and will produce one clue that can strengthen the judge's conviction that the defendant is guilty or not. This writing uses a normative juridical legal research method (normative research) with descriptive analytical research specifications using secondary data. The data collection procedures are in the form of documentation of notes or quotations, search of legal literature, books and others related to problem identification both offline. and online, which is then analyzed through the content analysis method (centent analysis method) with a focus on the problem of how to organize the evidence in the prosecution of a criminal case by the public prosecutor and how the prosecutor's use of instructional evidence in prosecuting criminal cases. Based on the results of the research that the provisions in Article 188 paragraph (1) of the Criminal Procedure Code state that an indication is an act, event or situation which due to its compatibility, either between one another, or with the criminal act itself, indicates that a criminal act has occurred and who the culprit. What is meant by directives is actions, events or things which are compatible with each other and the act that the accused is accused of showing clearly that a crime has been committed and who committed it.

Keywords:
Tool of Evidence, Criminal Matters, Prosecution

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A. Introduction

Law is a collection of various rules of life (written or unwritten), which determines whether a person should and should not do in his life, a special thing contained in the rules of life, namely that for compliance with these provisions can be enforced.[1] Law as a system can play a good and correct role in society if its implementing instruments are equipped with authorities in the field of law enforcement. To realize the principles of a rule of law, it is necessary to have both legal norms or statutory regulations, as well as apparatus who carry out and enforce the law. professional, integrity, and discipline supported by legal facilities and infrastructure as well as community legal behavior.

One of the law enforcement institutions that has a central position and a strategic role is the prosecutor's office. Because this institution becomes the filter between the investigation process and the examination process at trial. The existence of prosecutors who have the authority to prosecute and implement court decisions who have permanent legal force and other powers based on law are expected to be able to carry out their duties professionally and dedicated to creating justice in law enforcement.

As for proving a criminal case, the public prosecutor is required to use evidence that has been regulated in the Criminal Procedure Code. The evidence used is as in the formulation of Article 184 of the Criminal Procedure Code in the form of witness statements, expert statements, letters, instructions and statements of the defendants. The process of evidence by the Public Prosecutor was partly hampered by the lack of evidence presented at trial. Thus, the public prosecutor uses evidence in the examination of evidence as formulated in Article 188 paragraph (1) of the Criminal Procedure Code,

[1] Soedjono Dirdjosisworo, *Pengantar Ilmu Hukum.* Jakarta: Rajawali Pers, (1983), p.10.

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namely "Guidance is an act, event or situation due to its conformity, either between one another or with a criminal act. itself indicates that a criminal act has occurred and who the perpetrator is".

The public prosecutor actually used evidence of evidence as a basis for making charges if the minimum limit of proof had not been reached. Most of the evidence presented at the trial did not meet the requirements to prove the defendant's guilt. Evidence in a case of obscenity is one of several cases that use evidence in its evidence. In proving cases of obscenity, the public prosecutor often experiences difficulties that generally occur. because there are no witnesses other than the perpetrator and victim of sexual immorality himself. Instructional evidence is used to increase the judge's conviction that the defendant is guilty or not. Instructions are obtained from witness statements, letters and from the statements of the defendant which are put together, then put together and will produce one clue that can strengthen the judge's conviction that the defendant is guilty or not.

Based on the description above, the subject matter can be drawn which focuses on how to regulate evidence in the prosecution of a criminal case by the public prosecutor and how the process of using instructional evidence by the public prosecutor in prosecuting criminal cases. This writing uses normative juridical legal research methods (normative research), namely legal research conducted by examining library materials or secondary data.[2] Spesifikasi penelitian dalam penulisan ini berupa penelitian deskriptif analistis. Descriptive is to show the comparison or relationship of a set of data with another set of data, and its purpose is to provide an overview, study, explain and analyze.[3] According to the type and nature of the research, the data source used in this paper is secondary data consisting of primary legal materials in the form of; Criminal Code Act Number 8 of 1981 concerning the Criminal Procedure Code. Secondary legal materials consist of books, scientific journals, papers and scientific articles that can provide an explanation of primary legal materials. Tertiary legal materials; in the form of a Big Indonesian Dictionary and so on in finding definitions of terms in discussing evidence as a means of proof as a means of proof by public prosecutors against criminal cases.

The procedure used to collect data in this study is in the form of documentation, namely the guidelines used in the form of notes or quotations, search for legal literature, books and others related to the identification of problems in this research by offline or online. Analysis of legal materials is carried out using the content analysis method (centent analysis method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion.[4]

B. Discussion

1. Arrangements on the Evidence Tool in the Criminal Procedure Procedure by the Public Prosecutor

According to D. Simonsse, how quoted in his book Andi Hamzah, states as follows: The system of judges who remain in Indonesia follows the system in the Netherlands which used to also adhere to the jury system, but since 1813 it was abolished. On the contrary, since the revolution, France has imitated the system from England. Because of the many weaknesses of the system, Germany did not adopt it either.[5] There is no criminal matter that escapes the evidence of the witness evidence. Almost all evidence of a criminal case, always relies on the examination of witness evidence. At least in addition to evidence with other evidence, evidence is still required with evidence of witness evidence.[6]

The provisions in Article 188 paragraph (1) of the Criminal Procedure Code state that an indication is an act, event or situation which because of its compatibility, either between one another, or with the criminal act itself, indicates that a criminal act has occurred. and who did it.[7] Referred to as indications are actions, events or things which are compatible with each other and the act accused against the accused can clearly show that a crime has been committed and who committed it.

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[2] Seokanto dan Sri Muji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Rajawali Pers, (2003), p.15.
[3] Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, (1996), p.63.
[4] Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, (2011), p.171.
[5] M Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP Penyelidikan dan Penuntutan*. Jakarta: Sinar Grafika, (2001), p.22.
[6] M Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Pemeriksaan Sidang Pengadilan*, Banding, Kasasi, dan Peninjauan Kembali), Jakarta: Sinar Grafika, (2007), p.286.
[7] Andi Hamzah, *Hukum Acara Pidana Indonesia.* Jakarta: Sinar Grafika, (2014), p.277.

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What is meant by instructions are deeds, incidents or things that are compatible with each other as well as with the deeds alleged against the defendant can clearly show that a crime has been committed and who committed it (188 Law - Criminal Procedure Law). According to Article 188 paragraph (2) of the Law of Criminal Procedure Law the existence of instructions can only be proved by: a. Witnesses; b. Letters; c. Self-examination or testimony by a judge; d. Self-confession by the accused even though it was not done before the judge.

It should be noted that Article 188 paragraph (1) of the Criminal Procedure Law Book `contains the meaning that there is no absolute certainty for the defendant who has actually been guilty of committing the act as alleged. Therefore, a new act, event or situation is considered as an indication if there is a match between each other, as well as the crime itself, which indicates that a crime has occurred and who the perpetrator of the crime is. With the evidence of evidence can be assessed to have the power as a valid evidence, in addition the new evidence of evidence has the power as a valid evidence when there is a match obtained from the testimony of witnesses, letters and evidence of the defendant as in Article 188 paragraph (2) of the Law - Criminal Procedure Law. Hints can be a description, but not all of them can be used as hints. Evidence obtained from a witness can be referred to as clues, but if the evidence is obtained from both the suspect and the defendant is not a clue but can be a statement that will be burdensome or otherwise the evidence can alleviate.

Evidence of instructions for meaning can be seen according to the Criminal Procedure Code Article 188 Paragraph (1). Talking about the evidence of directive itself, its meaning can be seen according to the Criminal Procedure Code Article 188 Paragraph (1): "An indication is an act, event or situation, which because of its compatibility, is either between one another, or with an act. criminal itself, indicating that a criminal act has occurred and who the perpetrator is."

According to M. Yahya Harahap, namely: "A clue is a signal that can be drawn from an act, event or situation where the signal has a correspondence with one another or the signal has a correspondence with the crime itself, and from the appropriate signal give birth to or create a clue that forms the reality of the occurrence of a criminal act and the perpetrator is charged".[8]

The role and function of this directive evidence is to clarify a case whether a criminal act actually occurred. Once upon a time the Minutes of Investigation by an investigator submitted to the prosecutor's office were not complete and could not provide sufficient evidence, then instructions were given to find the suitability.

Evidence Guidance plays a role after existing evidence items are compatible or at least 2 (two) conforming evidence. For example, there are witnesses who are examined without being sworn in, but their testimonies are in accordance with one another. So that information can be drawn as a guide / used as a guide. In practice, evidence of guidance is not always used in proving criminal cases, but is widely used by judges in terms of strengthening and strengthening their convictions. Instructional evidence is used when other evidence (letters, witness statements, defendants' statements) have not yet strengthened the judge's conviction. So that the existence of directive evidence will further strengthen the judge's conviction that it is true that a criminal act has occurred and the defendant is indeed the perpetrator. The description above is quite clear about how the role and function of evidence evidence which is one of the valid evidence in the Criminal Procedure Code, briefly it is said that the role and function of evidence evidence is to strengthen the process of proving criminal cases. Apart from that, in trials to strengthen or strengthen the conviction of judges in examining and deciding cases.

Whereas what is meant by an act, incident or situation is facts that indicate that a criminal act has occurred, indicates the defendant did it and shows the defendant was guilty of committing the criminal act. These facts and added with other evidence can be used by judges in forming their convictions. Whereas the source of obtaining three facts about: the act, the incident, the situation according to the provisions of Article 188 paragraph (2) must be obtained from 3 (three) pieces of evidence, namely: witness testimony, letter and statement of the defendant. According to the author's opinion, it is sufficient to obtain two pieces of evidence, both the same type and different types of evidence.

As above it has been explained, that there are two parts of the agreement, the first Agreement, is the agreement between each act, between each situation, between each event or against one another. That is, the facts about the acts, incidents and circumstances obtained from the two or more

[8] M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP.* Jakarta: Sinar Grafika, (2018), p.313.

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instruments of evidence of the evidence of the witness, the evidence of the defendant, and or the letter, though different, each of which are closely related, or can be linked. The relationship is complementary, supporting each other, so that a conclusion (hint) can be drawn that it is true that a crime has occurred and the defendant is guilty of doing it. The second match, is the match between the act, incident or situation with the alleged criminal act. Every crime contains elements. The complexity of those elements is what is called a criminal act. Therefore, the suitability of the crime is in accordance with the existing elements, although it may be the content of a piece of evidence that corresponds to only a few elements. However, from the compatibility of this evidence tool and the content of other evidence tools must be able to show (can be concluded) reasonably a crime has occurred and who committed it. The two agreements are cumulative and imperative in nature. That is, it is not enough to make one adjustment, but it must be two adjustments.

The existence of an agreement that indicates the existence of 2 (two) cases or circumstances, is that (1) It Is True That A Crime Has Occurred, and (2) Indicates Who Made It. Do the three pieces of evidence have to work together to produce the evidence? There is no evidence that requires the use of all three. The evidence is also interpreted to apply in the form of the evidence of the evidence, because the provisions of Article 183 are the basis. As well as on one of the conditions for the validity and value of witness evidence (Article 185 paragraph (2), is to be supported by other evidence. on the evidence of the defendant which must be supported by other evidence (Article 189 paragraph 4) at least two pieces of evidence are reflected in Article 185 paragraph (2) and Article 189 paragraph (4).

Based on the spirit of Article 183 as mentioned above, the evidence for guidance can be established by the judge through the two pieces of evidence mentioned in Article 188 paragraph (2), either in the same type or in a different type. The important thing is that evidence of guidance must be formed through a minimum of 2 (two) pieces of evidence that have been used in previous trials. Instructional evidence can only be formed by a judge after examining the evidence, even all evidence. That means, evidence. This directive is only formed by a judge through legal considerations in a decision. That is the meaning of the evidence of guidance.

Can the public prosecutor use evidence? Of course you can. The prosecutor forms evidence of guidance in his requirements and the legal advisor will deny the formation of evidence of the prosecutor's instructions in his plea. However, evidence of evidence formed by the public prosecutor and / or a legal advisor's rebuttal, is not binding on the judge. For the judge, evidence of evidence formed by the public prosecutor is free. The free value of its value depends on the judge, whether it contains value and will be used as evidence for guidance in legal considerations or whether it is simply ignored, it is entirely up to the judge himself. However, as a good prosecutor it is his duty to try to establish evidence of guidance. Likewise for a good and professional legal adviser, it is certainly the duty of his profession to deny or disprove the evidence of guidance formed by the prosecutor in his defense, by using arguments and juridical reasons and logically, it is not an arbitrary reason.

Careless reasons would undermine and undermine his own credibility as an advocate. Can you use expert evidence to form evidence? If Article 188 paragraph (2) has been determined in a limitative manner, let alone by using the word "only", then it is certain that the judge is not allowed to use expert evidence to form evidence of guidance. However, expert information can be used for additional materials in forming evidence for guidance. As well as evidence, which can also be used as additional material to form evidence for guidance.

2. The Process of Using the Evidence Evidence Tool by the Public Prosecutor in the Criminal Prosecution

Djisman Samosir is of the opinion that the assessment of the evidentiary strength of a guide in any given situation is carried out by the judge wisely and wisely after he has conducted an examination with full accuracy and thoroughness of his conscience.[9] Romli Atmasasmita in his book says that the principle of equality before the judge is not explicitly stated in the Criminal Procedure Code, but this principle is an inseparable part of the Criminal Procedure Code. The placement of this principle as a unit shows how important this principle is in the life order of the Criminal Procedure Code in Indonesia. According to Hibnu Nugroho, he explained that the witness was a person who provided

[9] C. Djisman Samosir, *Jaksa dan Hakim dalam Proses Pidana*.Bandung:Binacipta, (1985), p.90.

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information for the purposes of investigation, prosecution and trial regarding a criminal case which he personally saw and experienced himself.[10]

The provision for applying evidence of guidance is based on Article 188 paragraph (2) of the Criminal Procedure Code to limit the authority of the prosecutor in obtaining evidence of guidance. The public prosecutor must not want to seek evidence at will from various sources. Sources that can be used to construct limited evidence of evidence from evidence which are limitatively determined in Article 188 paragraph (2) of the Criminal Procedure Code, namely: a. Witness statement; b. Letter; c. Statement of the Defendant.

Based on these three tools of evidence, the suitability of the act, event or situation can be sought and created, so that the evidence of guidance can be obtained. JPU is prohibited from seeking and obtaining external evidence that has been determined by law. Member's testimony is not used as a source of guidance, the law does not provide a definite explanation as to why member's evidence is not included in the article, although in fact expert evidence in certain cases is very helpful to obtain guidance. The possibility of lawmakers banning expert evidence as a source of evidence is based on the need to limit the judge's authority to seek evidence evidence from too many sources. Proving in a logical sense is to give absolute assurance of an event that is difficult to deny its truth by anyone, including by the opponent. As for proving in the conventional sense is proving an event but not absolute (so the certainty is very relative). That in essence the way the judge applies the evidence of evidence is not limited to Article 188 paragraph (2) of the Criminal Procedure Law which only limits the way the judge applies the evidence of evidence only to the testimony of witnesses, letters and evidence of the defendant, but the judge further interprets broadly that the evidence-based tool can also be applied based on the facts revealed in the conference including also the testimony of experts, if the crime scene (Place of Incident) and evidence items.

The judge's application of directive evidence based on Article 188 paragraph (1) of the Criminal Procedure Code is to indicate that a criminal act has occurred and to know who the perpetrator is. The use of directive evidence is not only to convict someone but also to release someone from prosecution. This means that the judge concludes that the judge's use of evidence based on Article 188 (1) of the Criminal Procedure Code has indeed committed a criminal offense, but the perpetrator is not necessarily someone who has been indicted by the public prosecutor.

There are various instructions, namely:

1) Instructions from investigators; Namely the instructions used by investigators in carrying out investigations in order to identify the perpetrators of crimes and to find suspects based on the evidence found in the investigation process.
2) Instructions from the public prosecutor; Namely before carrying out the prosecution, the public prosecutor must submit complete files to the court, but if the files from the investigators are not complete, the public prosecutor will give instructions to the investigators to complete the files.
3) Instructions from the judge; That is, the instructions used by the judge in the court of law based on the suitability of the evidence presented at the trial and the facts revealed at the trial to decide a matter.

In the trial of a criminal trial, the instrument of indictment has independent legal force. This is inseparable from the nature of the evidence tool itself as an indirect evidence tool that cannot stand alone but must be obtained from the compatibility between other evidence tools. Therefore, the judge is free to give an assessment based on the examination conducted in the proof stage, in addition the judge also has the freedom to use the evidence of such instructions in an effort to meet the minimum threshold of proof.

Proof of whether or not the defendant has committed the accused is the most important part of a criminal procedure. In this case, human rights are also at stake, so what will be the consequences if someone who is accused is proven to have committed the accused but it is not true. For this reason, the criminal procedure law seeks to find material truth. Proof is also the central point of criminal procedural law. Evidence is provisions that contain outlines and guidelines on ways that are justified by law to prove the guilt of the accused to the accused. Evidence is also a provision that regulates the

[10] Hibnu Nugroho, Bunga Rampai *Penegakan Hukum di Indonesia*, Semarang: Badan Penerbit Undip, (2010), p.34.

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means of evidence justified by law that a judge may use to prove the guilt of the accused. Court proceedings must not be arbitrary and arbitrarily prove the defendant's guilt.[11]

C. Conclusion

The provisions in Article 188 paragraph (1) of the Criminal Procedure Code state that an indication is an act, event or situation which because of its compatibility, either between one another, or with the criminal act itself, indicates that a criminal act has occurred. and who did it. Referred to as indications are actions, events or things which are compatible with each other and the act alleged against the accused can clearly show that a crime has been committed and who committed it. As for what is meant by indications are actions, events or things that are compatible with each other and the act accused against the accused can clearly show that a crime has been committed and who committed it (188 Book of Law) -The Law on Criminal Procedure). According to Article 188 paragraph (2) of the Criminal Procedure Code, there are instructions that can only be proven by witnesses, letters, self-examination or testimony by a judge and self-confession by the accused even if it is not carried out before the judge.

The process of using instructional evidence by the public prosecutor as a means of proving a criminal case. The provisions for applying directive evidence are based on Article 188 paragraph (2) of the Criminal Procedure Code restricting the power of prosecutors in how to obtain directive evidence. The public prosecutor must not want to seek evidence at will from various sources. Sources that can be used to construct limited indicative evidence from evidence which are limitatively specified in Article 188 paragraph (2) of the Criminal Procedure Code, namely: Witness statements, letters and statements of the Defendant.

In handling cases of obscenity, the Public Prosecutor is demanded to be more careful, especially in terms of the use of evidence, because in addition to the legal substance, in this case, the evidence is to have sufficient evidentiary power to ensnare the accused of a criminal act. The position of prosecutors as legal officers is expected to be critical in responding to and handling cases. The basis of justice must be made dogmatic for prosecutors in their performance. This is a responsibility that is carried out like during the oath of office. Because the current reality is precisely justice that is expected to protect the enforcement apparatus the law is further away from expectations.

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[11] M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP.* Jakarta: Sinar Grafika, (2018), p. 273.

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