Inspection Cross Expertise in Criminal Procedure

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Abstract
In criminal procedural law, we know that to prove that an event was a criminal event, a mechanism is needed which is not simple. In the Criminal Code, it is stated that it must fulfill several conditions for an event to be included in the category of a criminal act, namely that it must go through just evidence, of course in fair proof it must be supported by evidence stipulated in Article 184 paragraph (1) of the Criminal Procedure Code. In addition to witness statements, there is also evidence from expert testimony. The expert gap is mentioned in Article 1 number 28, namely information given by someone with special expertise on matters needed to explain a criminal case for examination purposes. Then, sometimes the examination of a case by a judge requires expert testimony from various fields of science which implies that several experts must be presented who can clarify a case, here the question arises when these experts are presented, especially in expert examinations whose fields are contradictory to each other, so that cross-examination can be carried out. experts. In addition, problems that arise in criminal trials related to expert testimony are related to the time or when (timing) the expert is presented, so far we both know that after the statement of the defendant, the examination of evidence is considered to have ended. However, often the public prosecutor, legal advisers, and the judge himself want to dig deeper into the case being examined, especially about expert testimony, this is where a problem is found because the procedural rules have not been clearly explained, while the nature of procedural law itself is rigid and limitations.

1. Introduction

As an embodiment of a rule of law and respect for human rights, criminal procedural law is designed in such a way as to provide comprehensive legal protection for citizens who are in direct contact with the formal law. Criminal procedural law can be interpreted as enforcing or making

material law alive in this case is criminal law.

The function of criminal sanctions in criminal law is not merely to frighten or threaten the offenders, but more than that, the existence of these sanctions must also be able to educate and improve the perpetrators. Criminal punishment is essentially misery, but punishment is not meant to suffer and is not allowed to degrade human dignity. The rationale for reforming criminal law and sentencing does not only focus on the interests of the community but also individual protection from perpetrators of criminal acts.

Criminal procedural law talks about the aspects of proof in determining whether an act is included in the criminal realm or not. Some interpret the criminal procedural law as a mechanism from upstream to downstream, where the mechanism that was initially (*upstream*) a general event was then filtered and finally, it could be classified as a criminal act and found the perpetrators of the criminal act.

In general, the criminal procedural law is that every stage that will be passed, of course, requires costs, and the funding is borne by the government as the administrator of the state. However, as a system, criminal procedural law also places a burden on litigants to pay criminal case costs by applicable regulations.

In criminal procedural law, we know that proving that an event is a criminal event requires a mechanism that is not simple. In the Criminal Code, it is stated that it must fulfill several conditions for an event to be included in the category of a criminal act, namely that it must go through just evidence, of course in fair proof it must be supported by evidence stipulated in Article 184 paragraph (1) of the Criminal Procedure Code.

In criminalizes probationers debent esse luce clarifies, meaning that the evidence must be brighter than light in a criminal case. Thus the Latin postulate emphasizes the importance of evidence in proving a crime. The following review will provide a broad explanation of the evidence in the Indonesian criminal procedural law which refers to Articles 184 to 189 of the Criminal Procedure Code (Satria, 2021).

In addition to witness testimony, there is also expert testimony. Hariman Satria wrote *cuiqui in sua arte credendum ast* , meaning that everyone must be trusted in their field of expertise, thus the Latin postulate explains the context of expertise. An expert is someone who is proficient or has mastered something. It can also be said that people can examine, analyze, and interpret science. Meanwhile, expert discretion is mentioned in Article 1 number 28,

namely information given by someone with special expertise on matters needed to shed light on a criminal case for examination purposes. Then, Article 186 of the Criminal Procedure Code confirms that: "expert testimony is what an expert states in court." (Satria, 2021).

Sometimes the examination of a case by a judge requires expert testimony from various fields of science which implies that several experts must be presented who can clarify a case, here the question arises of when these experts will be presented , especially in expert examinations whose fields are contradictory to each other, so that *cross expertise can be carried out.*

In addition, problems that arise in criminal trials related to expert testimony are related to the time or when (timing) the expert is presented, so far we both know that after the statement of the defendant, the examination of evidence is considered to have ended. However, often the public prosecutor, legal advisers and the judge himself want to dig deeper into the case being examined, especially about expert testimony, this is where a problem is found, because the procedural rules have not been clearly explained, while the nature of procedural law itself is rigid . and limitative.

2. Research Method

The type of research used is normative legal research. Normative legal research is research that examines legal issues from the point of view of legal science in depth on the established legal norms. Normative legal research is research that obtains legal materials by collecting and analyzing legal materials related to the issues to be discussed. Legal research is carried out to find solutions to legal issues that arise, therefore, legal research is research within the framework of *know-how* in law. The result achieved is to provide a prescription regarding what should be the issue raised (Marzuki, 2015). The nature of the research here is the nature of prescriptive research, namely re-examining according to the legal theory of norms that are considered to be vague *of norms* and finding ideal and most applicable answers to legal issues that are the subject of discussion. The type of research is about blurring norms contained in Article 186 of the Criminal Procedure Code. The approach used in this legal research is the statute approach *and* the conceptual *approach*. The statutory approach is carried out by examining laws and regulations related to the legal issues to be answered.

3. Results and Discussion

a. Elements of Expert Statement in Criminal Cases

Efforts made by law enforcers to seek the material truth of a criminal case are intended to avoid mistakes in imposing a crime on a person, this is as stipulated in Law no. 14 of 1970 concerning the Main Provisions of Judicial Powers Article 6 paragraph (2) which states: "*No one can be sentenced to a crime*

unless the court because of valid means of proof according to the law gets the conviction that a person who is considered to be responsible, has been guilty of an activist accused of him. " With the existence of the statutory provisions above, in the process of settling criminal cases, law enforcement is obliged to try to collect evidence and facts regarding criminal cases which are handled as completely as possible. The legal means of evidence as referred to above and those which have been determined according to the provisions of the Legislation are as stipulated in Law No. 8 of 1981 concerning the Criminal Procedure Code (*KUHAP*) in article 184 paragraph (1). To obtain the necessary evidence to examine a criminal case, law enforcers are often faced with a problem or certain matters that cannot be resolved on their own because the problem is beyond their capacity or expertise. In this case, the assistance of an expert is very important to find the most complete material truth for the law enforcers (The Role of Visum Et Repertum at the Investigation Stage in Revealing the Crime of Rape, n.d.).

In Article 1 Point 28 of the Criminal Procedure Code (*which is located in Chapter I of the Criminal Procedure Code*), there is an explanation regarding the term expert testimony namely, "*expert testimony is information given by a person who has special expertise on matters needed to clarify a criminal case for examination*."

The expert's statement based on the formulation of Article 1 point 28 is:

1. Information was given by someone who has special expertise about the things needed. In this part of the sentence, it is defined who is the subject of expert testimony, or who can provide expert testimony, namely: a person who has special expertise on the matter required.
2. To make light of a criminal case for the benefit of the examiner. This part of the sentence concerns the function of an expert statement, namely: to make light of a criminal case for examination.

In Chapter XVI of the Criminal Procedure Code: Examination at Court Sessions, in Part Four: Evidence and Decisions in Ordinary Examination Procedures, there is also an article that defines expert testimony, namely Article 186. According to this article, expert testimony is what an expert states in court.

Regarding the need for the assistance of an expert in providing information related to his ability and expertise to assist in the disclosure and examination of a criminal case, Prof. A. Karim Nasution stated: " *Even though the knowledge, education, and experience of a person may be much wider than that of another person, the knowledge and experience of every human being is still limited*". So that the tasks according to the criminal procedural law are carried out as well as possible, the law provides the possibility for investigators and judges in special circumstances to obtain assistance

from people who have specific knowledge and experience (The Role of Visum Et Repertum at the Investigation Stage in Revealing the Crime of Rape, n.d.).

Placing expert testimony as valid evidence is something that can be noted as one of the advances in legal reform. As a crime in the public domain, the role of experts is needed to clarify understanding, especially to judges, how the legal construction should be built from the results of investigations, charges, and demands presented in court (Isharyanto, n.d.).

In examining criminal cases at the investigative level, sometimes investigators have difficulty determining which article applies to the criminal case being examined. Therefore, investigators can summon and ask for expert testimony so that the criminal incident being investigated can be revealed more clearly.

Examination of expert testimony only if the investigator deems it necessary, especially for people who have special expertise, with the intention that the criminal act being investigated becomes clearer. So, the role of expert testimony in the process of examining criminal cases at the investigative level is to make light of a crime that occurred.

In carrying out its duties and functions at the investigative level, it is not uncommon for investigators to face obstacles or obstacles in obtaining expert information to assist investigators in uncovering a criminal case. The obstacle often faced by investigators is the obstacle in terms of the ability of the police apparatus, namely in terms of understanding the information given by an expert. This is because sometimes experts in the same field do not always provide the same information regarding the same criminal case. Thus, investigators cannot rely only on one expert's statement, because investigators may ask more than one expert to provide information on a criminal case.

b. Investigation of the legal strength of expert testimony in proving criminal cases

The expert statement phrase can be divided into two words, namely description, and expert. In the Big Indonesian Dictionary, the word adverb has three meanings, namely (Amiruddin & Asikin, 2006):

1. description and so on to explain something explanation;
2. something that is a clue, such as a proof, a sign; everything that is already known or causes to know; all reasons;
3. a word or group of words that describes (*defines*) another word or part of a sentence.

In practice, this evidence is called expert witness evidence. Of course, the

use of the term expert witness is incorrect. Because the words of witnesses contain different meanings from experts or expert testimony. That the content of the statement given by the witness was everything that he heard, saw, and experienced himself (*Article 1 point 26*). In the testimony of witnesses, reasons must be given for their knowledge (*Article 1 point 27*). Meanwhile, an expert gives information not about everything that he has seen, heard, and experienced himself, but about things that are or are in his area of expertise that are related to the case being examined.

Apart from that, there is another difference when witness testimony is given at the investigative level, so before giving testimony beforehand, the expert investigator must first take an oath or promise (*Article 120*). However, a witness whose testimony is heard at the investigative level is not required to take an oath or promise beforehand. (*Article 116*).

In particular, there are 2 conditions from the testimony of an expert, namely:

1. that what is explained must be about everything that falls within the scope of his expertise.
2. that what was explained regarding his expertise was closely related to the criminal case being examined.

Even though HIR is also familiar with expert testimony, its function and method of use are not the same as expert testimony according to the Criminal Procedure Code. Increasing the function and position of expert testimony to become acceptable evidence, bearing in mind that the development of science and technology is now very rapid which makes it impossible for judges to master all of these fields of science and technology, so it is only natural that judges now trust expert testimony.

Who or what conditions must be owned by someone so he becomes an expert? Article 1 number 28 simply mentions people who have special expertise, but the criteria are not explained. Indeed, there are several articles that in their formulation state qualifications for special expertise, such as an expert who has expertise on forged letters and writings (*Article 132*); a medical expert of the judiciary, or a doctor (*Article 133 paragraph 1, Article 179 paragraph 1*), but this mention does not contain the requirements of an expert, but rather mentions certain areas of expertise. Of course, there are still many areas of expertise. The number of experts outside the areas of expertise that have been mentioned in these articles is not limited (Amiruddin & Asikin, 2006).

From the point of view of the nature of the contents of the information provided by the expert, the expert can be distinguished between:

1. an expert who explains the results of an examination of something that has been done based on special expertise for that. For example, a forensic doctor provides expert testimony at a court hearing about the

cause of death after the doctor performs a post-mortem (*autopsy*). Or an accountant gives information in court about the results of an audit he conducted on the finances of a government agency.

2. an expert who explains solely about special expertise on something that is closely related to the criminal case being investigated without conducting an examination first. For example, an expert in the field of bomb assembly explains in court how to assemble a bomb. In fact, in practice, a legal expert with a special area of expertise/concentration is often used and they are also called an expert.

An expert is not always determined by the existence of special formal education for his field of expertise such as a forensic medical expert, but by experience and or certain fields of work that he has been practicing for a long time, which according to common sense is very reasonable to be an expert in that particular field.

The urgency of this expert's statement is seen in criminal acts involving crimes against life and body. According to Article 133 paragraph (1) investigators must automatically ask for the opinion of a medical expert of the judiciary or a doctor and/or other expert regarding crimes against life and body. In solving crimes, the experts who help a lot are experts in the field of forensic science.

Everyone who is asked for his opinion as a medical expert of the judiciary or a doctor or other expert is obliged to provide expert testimony for the sake of justice. Explanation of Article 133 paragraph (2) The statement given by a medical expert in the judiciary is called an expert statement, while the statement given by a doctor who is not a member of the judiciary is called a statement. From the elucidation of Article 133 paragraph (2) of the Criminal Procedure Code, it can be concluded that expert testimony is only provided by a doctor of judicial medicine.

At the stage of interrogation and reconstruction of suspects, the assistance of judicial medical experts can assist the objectives of interrogation, namely obtaining convictions and statements about whether or not a suspect is wrong, obtaining correct confessions from suspects, examining facts and circumstances related to crimes, developing information to become the basis of successful investigations and obtaining facts from other crimes in which the suspect is also the perpetrator or participates in it.

Regarding the form of expert testimony verbally or in written form, it is not explained in detail in the Criminal Procedure Code. Expert testimony given orally can be seen in Article 186 of the Criminal Procedure Code which states "Expert testimony is what an expert states in court". When we talk about written statements given by experts, especially visum et report or expertise (reports), the question arises whether the written statements can be categorized as evidence of expert testimony or documentary evidence as

stated in Article 187 letter c Criminal Procedure Code.

If it is necessary to clarify the situation of a problem that arises in a court session, the head judge at the trial can ask for expert testimony and can also request that new material be submitted by the interested party (article 180 of the Criminal Procedure Code). For example, according to the expert statement (*deskundige verk/amjg*) submitted by the public prosecutor as evidence it was explained that the writing and signature listed in the documentary evidence were true.

c. Expert Competency Testing Through Cross Examination in the Criminal Procedure Code

Regarding the legal basis of experts contained in Article 184 paragraph (1) letter b of the Criminal Procedure Code. By Article 186 of the Criminal Procedure Code, expert testimony is what an expert states in court. Therefore the main function of the presence of an expert in court is to state his expertise. An expert is needed when there is only one piece of evidence other than an expert or there are two expert pieces of evidence, then the expert strengthens the evidence. The influence of the expert on the evidence in the trial of the criminal case can be seen from the weight of the expert's statement.

Procedures for proving expert testimony as valid evidence can be through procedures by the provisions of the Criminal Procedure Code (Hamzah, 2008):

1. Requested by the investigator at the investigative examination stage. Procedures and forms or types of expert testimony as valid evidence at the investigative examination stage:
   a. Requested and given experts at the investigative examination stage. In the interests of justice, investigators request expert testimony. The request is made by the investigator in writing by explicitly stating what the expert's examination is being carried out for.
   b. At the request of the investigator, the expert concerned makes a report. The report can be in the form of a statement or also in the form of a post-mortem et reported.
   c. The report or visum et report is made by the expert concerned by remembering the oath when the expert accepts a position or job.
   d. With the procedure for expert reports like that, the information contained in the form of visum et reported has the nature and value of being valid evidence according to law.
2. Expert testimony requested at and given at court hearings. A request for expert testimony in an examination before a court session is required if at the time of the investigative examination, no expert testimony has

been requested. But it can also happen that even though the investigator and public prosecutor during the investigative examination have asked for expert testimony if the judge or the accused as well as the legal adviser wishes and deems it necessary to hear the expert's testimony at a trial court, they can ask for information from the expert they appointed at the trial session.

Djoko Prakoso stated that the Criminal Procedure Code has determined the expert's testimony as valid evidence, so the consequence is that the judge cannot simply dismiss the expert's statement (Prakoso, 1988). Judges cannot ignore expert testimony, especially if the process of proving a crime, such as proving an environmental crime, requires the ability of experts who master science and technology.

When the expert was presented at the trial, the expert did not reveal the facts. Facts revealed by witnesses who are not experts. For example, when a murder occurs, those who see blood are called witnesses. While experts only reveal information related to the knowledge they have.

Judges allow *expert witnesses* to testify in court as long as they meet the criteria of Rule 702 of *the Federal Rules of Evidence* regarding *Testimony by Expert Witnesses*. These provisions provide criteria about who can qualify as an *expert*, namely someone *by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:*

a. the expert's scientific, technical, or other specialized knowledge will help the trier of facts to understand the evidence or to determine a fact in issue;
b. the testimony is based on sufficient facts or data;
c. the testimony is the product of reliable principles and methods; and
d. the expert has reliably applied the principles and methods to the facts of the case.

If you look at its history, the birth of *Federal Rules of Evidence* 702 was a response from lawmakers to the Daubert case, where at that time the American Supreme Court established the criteria for an expert witness with 4 criteria, which later became known as the Daubert criteria, namely:

a. is the evidence based on a testable theory or technique;
b. has the theory or technique been peer-reviewed;
c. in the case of a particular technique, does it have a known error rate and standards controlling the technique's operation; and
d. is the underlying science generally accepted.

Cross-examination of experts is not mentioned in the Criminal Procedure Code, even though from a theoretical and practical approach, it may be relevant to carry out such cross-examination, to obtain clearer and more complete clarity on a problem. Even though the law only regulates as far as re-examination is concerned, provisions regarding this matter can be used as guidelines regulating

the system of cross-examination of experts. Starting from these guidelines, cross-checking can be carried out by the implementation reference as below:

a. Examine other experts who are the same in their field of expertise as experts who have been examined at court hearings.
b. In cross-examination of experts, equal rights must be given to all parties.
c. The limit that is considered appropriate to determine the deadline for submitting experts in the context of cross-examination is Article 160 paragraph (1) letter c of the Criminal Procedure Code.
d. Examination is confronted or separately

4. Conclusion

The criteria for a case to be subject to cross-expert examination (*cross expertise*) are cases in which the public prosecutor feels that the proof of the existence of a criminal act or act is still incomplete. This cross-examination of experts has the aim of making light of a criminal act in a case to reach the judge's conviction at trial.

In determining the criteria for a case, cross-expert examinations can be carried out. This matter should be regulated in the provisions of the technical regulations within the Supreme Court. Because the truth is that the judge must explore the ins and outs related to the case being examined, one of which is by presenting experts so that the result is a decision that accommodates justice and expediency.

It is hoped that in the future, after knowing the urgency of regulating this matter, this provision will be made clearer so that in the future it can become a guideline for implementing law enforcement, especially in the aspect of evidence.

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