

## THE OBJECTIVITY OF POLICE TESTIMONY IN THE TRIAL EVIDENCE

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### ABSTRACT

Crime and drug abuse in Indonesia have been considered severe cases. As in the status quo, the police are now intensively arresting perpetrators of drug abuse and ensuring that the law enforcement process runs against the drug users to make them responsible for their actions before the law until the trial. In practice, during the trial evidence, the police give testimony in the court as the party who arrests the suspected perpetrators of drug abuse. However, the testimony from the police who act as the witness for the drug abuse cases is vulnerable to the nuances of case engineering or torture in obtaining information from the suspect. This study aims to find out and analyze three things: 1. the objectivity of the testimony from the police who arrested the drug abusers in evidence following the Criminal Procedure Code. 2. the considerations of the judges on the testimony of the police who arrested the drug abusers at the Bengkulu District Court Class IA in case of Number: 271/Pid.Sus/2020/PN Bgl.) and 3. the decision of Cassation of the Supreme Court of the Republic of Indonesia Number: 1531 K/Pid.Sus/2010, related to the objectivity of the police testimony in evidence following the Criminal Procedure Code. This study employed a statutory and conceptual approach related to the judge's consideration of the testimony of the police who arrested the drug abusers. Considerably, it is not appropriate to present the police testimony as a fact witness due to particular bias on the confirmation of the results from the investigation, in which the police are most likely to have an interest in the success of his case in court.

**Keywords:** Objectivity, Testimony, Police, Arrest.

## **A. INTRODUCTION**

### **1. Background**

The crime of narcotics and drug abuse in Indonesia has become a serious problem. The condition happens because Indonesia is now consider as not only a consumer and target for the narcotics market but also as one of the countries producing narcotics and other illegal drugs.

The action to prevent and eradicate the circulation and abuse of narcotics in the community should be continued by involving law enforcement officers, especially the police, to strengthen their role and professionalism function. Law number 22 of 2002 concerning the National Police of the Republic of Indonesia has set limits on the role of the police as stated in Article 5 paragraph (1), which reads:

The National Police of the Republic of Indonesia is a state instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection and services to the community to maintain domestic security.<sup>1</sup>

Currently, law enforcement officers are aggressively arresting perpetrators of drug abuse and ensuring that the law

enforcement process runs against the drug users to make them responsible for their actions before the law until the trial. In practice, law enforcement officers, the police, testify directly before the trial as the party who arrests the alleged perpetrator of drug abuse; However, the testimony of the police, who is also a witness in proving narcotics crime cases, are full of conflicts of interest. They tend to be non-objective, subjective and bias in their testimony, vulnerable to nuances of case engineering or torture in obtaining information from the suspect.

Based on the explanation above, the researcher is interested in conducting a research with the title "The Objectivity of Police Testimony in the Trial Evidence". This research will focus on studying the causes of increasing domestic violence cases and how to overcome them.

### **2. Formulation of the problem**

Based on this background, the problem formulation of this research is:

- a. How is the objectivity of the testimony of the police who arrested drug abusers in the evidence according to the Criminal Procedure Code?

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<sup>1</sup>Law Number 22 of 2002 concerning the Indonesian National Police

- b. What are the judges' considerations regarding the testimony of the police who arrested narcotics abusers in the Bengkulu District Court Decision Number: 271/Pid.Sus/2020/Pn Bgl and the Supreme Court Cassation Decision Number:1531 K/Pid.Sus/2010?

## **B. RESEARCH METHODS**

The research approach used in this study is a normative legal approach. By employing a descriptive analysis, the researcher hopes that the objects described in this research are related to the objectivity of the police testimony in the trial evidence and can be studied and understood correctly.

The legal materials used in this research are primary and secondary materials obtained through legislation, literature studies and court decisions by conducting document studies, court decisions and finding legal literature and other information to collect legal materials.

## **C. RESEARCH RESULTS AND DISCUSSION**

### **1. The objectivity of Police Testimony in the Trial Evidence According to the Criminal Procedure Code**

In carrying out the duties and authorities of criminal law enforcement, the state apparatus is assisted by the police, prosecutors and courts. Based on the Criminal Procedure Code, the investigator is a state police official of the Republic of Indonesia who is given special authority by law.<sup>2</sup> We can also see this by the importance of the prosecutor's position in the function of the prosecutor in resolving a criminal case, where the prosecutor's position is between the investigators and judges.

The investigation, which is the first attempt to collect evidence to make clear of a criminal act, is fully the responsibility of the police. Therefore, regarding the results of the examination of the suspect and other evidentiary materials, before being submitted to the public prosecutor, the investigator is obligated to objectively assess the evidence based on the actual truth given and human principles.

Regarding the objectivity of the arresting police's testimony, Yusril considered that an arresting police officer who testifies as a witness was not adequately presented as a fact witness because the police would confirm the results of his investigation. Furthermore, the judge could

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<sup>2</sup>Laden Marpaung, *Proses Penanganan Perkara Pidana*, Sinar Grafika, Jakarta, 1992, p. 71

not consider what the witnesses presented at the trial as evidence. Because what the witness said was already contained in the evidence when investigating the case. If he explains, the evidence is still one; it cannot become a different piece of evidence.<sup>3</sup>

Evidence is the central point of examination of cases in court proceedings. Evidence is provisioned containing outlines and guidelines regarding procedures justified by law, proving the guilt charged to the suspect. Evidence is also a provision that regulates the evidence justified by law that judges may use to prove the guilt of the accused. The trial court may not arbitrarily prove the guilt of the accused.

One of the evidentiary processes in court is the examination of witnesses. The definition of a witness as stipulated in Article 1 point 26 of the Criminal Procedure Code is:

"Witness is someone who can provide information for the investigation, prosecution and trial regarding a criminal case he saw and experienced himself".

Examination of cases in court at a certain level is an essential part of the

criminal process. The deliberations and decisions are taken from the examination. The source provided material for the judge to prove whether the indictment was proven and whether the defendant was guilty.

This evidentiary process intends to obtain evidence in the form of witness statements, expert statements, letters and evidence to describe an event suspected of being a criminal act and finding a suspect. The following process of evidentiary in court is disclosing the facts of an event through various pieces of evidence, and sometimes additional evidence. Arrangements related to evidence are necessary because they reflect the meaning of the Indonesian state as a country that upholds the law to be obeyed and implemented by every Indonesian citizen.

The facts obtained will be assembled into an event, which event is like the real one (material truth). Where there is a correlation and interaction regarding what will be applied by the judge in finding the material truth through the the trial evidence, evidence tools and the process of proving the following aspects<sup>4</sup>:

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<sup>3</sup>Sindonews.com, Yusril: Investigators Should Not Be Presented as Witness, <https://nasional.sindonews.com/read/1028162/13/yusril-tidak-patut-penyidik-dihadirkan-sebagai-saksi-1438354535> (accessed on Wednesday, July 27<sup>th</sup>, 2022. 22.43)

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<sup>4</sup>Martiman Prodjohamidjojo, *Penerapan Pembuktian Terbalik Dalam Delik Korupsi UU No. 31 Tahun 1999*, CV. Mandar Maju, Bandung, 2001, p. 99

- a. Which acts can be considered proven;
- b. Has it been proven that the defendant is guilty of the acts he is accused of;
- c. What offence was committed in connection with these acts;
- d. What punishment should be imposed on the defendant.

The testimony of police investigators in examining criminal acts of narcotics abuse has an interest in the case so that the cases they handle are successful in court, that their statements must incriminate or corner the accused and that investigators can manipulate information. Whereas what is needed as a witness is a person who is genuinely given freely, neutrally, objectively and honestly (Explanation of Article 185 paragraph (6) of the Criminal Procedure Code).

In such circumstances, the judge must consider the testimony of the investigator witness at trial. In assessing the truth of the testimony of a witness, the judge must seriously pay attention to the things that form the basis of his testimony as stipulated in Article 185 paragraph 6 letter d of the Criminal Procedure Code:

- a. Conformity between witness statements or one another;

- b. Conformity between witness statements and other evidence;
- c. Reasons that may be used by witnesses to provide certain information;
- d. The way of life, the morality of the witness, and everything, in general, can affect whether or not the information can be trusted.

In law, to determine the quality of a person's ability to provide testimony, it is not from the willingness to take an oath but from the point of objectivity of legal subjects who will provide information where this person knew, experienced, and heard about the event that occurs other than law enforcement officers who handle cases. The person is also not someone who commits a crime; if he is willing to take an oath, he turns into someone else as the perpetrator of the crime that occurred, even though his statement is full of lies.

The performance of this task is the truth of the performance of law enforcement officers, not the material truth in criminal cases that an objective witness must explain. Moreover, the investigator is not the quality of a person to give testimony, but the holder of power over law enforcement authorities, including shooting or other actions, as stated in Article 7 of the Criminal Procedure Code.

The absence of separation of authority and personnel in handling cases opens opportunities for abuse of authority due to minimal supervision. If this happens, the suspect's right to justice can be violated. Witness statements based on investigators' statements can be seen as evidence if they meet the formal provisions as referred to in Article 15 of the Criminal Procedure Code. However, to see their value in proving the judge's conviction, it is still possible to raise doubts, especially regarding the objectivity of the witness' statements.

The presence of police investigators as witnesses in court is only used when giving verbal information. This verbal statement has not been explicitly regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code and other laws and regulations in Indonesia. However, using verbal witnesses is often found in criminal procedural law practice.<sup>5</sup>

In this case, the quality of police officers cannot be accepted as witnesses, which is very reasonable. Because to determine whether the judge can take a

witness, they must consider the background of life, work, and interests of the witness in the case.

## **2. Judge's Consideration of Police Testimony in the Bengkulu District Court Decision Number: 271/Pid.Sus/2020/Pn Bgl and Supreme Court Cassation Decision of the Republic of Indonesia Number:1531 K/Pid.Sus/2010.**

### **a. Judge's Consideration of the Police Testimony in the Bengkulu District Court Decision Number: 271/Pid.Sus/2020/Pn Bgl**

In considering their decision, the Panel of Judges on the quo case did not carefully consider the objectivity of the testimony of Dodi Saputra and Efran Yuliansyah, police officers who work at the Directorate of Drug Investigation of Bengkulu Resort, who arrested the defendant. Panel of Judges should have considered the testimony of the police who arrested the defendant because their witness contained a conflict of interest; in this case, the quality of the Police officers cannot be accepted as witnesses. This consideration is very reasonable because to determine whether a witness can be accepted or not; their background must be seen and

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<sup>5</sup>Tri Jata Ayu Pramesti, *Apakah Penyidik Dapat Dijadikan Saksi di Persidangan*  
<http://www.hukumonline.com/klinik/detail/lt569a106763c69/apakah-penyidik-dapat-dijadikan-saksi-di-persidangan>, (accessed on Wednesday, July 27<sup>th</sup>, 22.57)

considered. Unfortunately, the Panel of Judges did not consider the background of their life or work and their interests as witnesses.

**b. The Judge's Consideration of the Police Testimony in the Supreme Court Cassation Decision of the Republic of Indonesia Number: 1531 K/Pid.Sus/2010.**

In the decision of the case Number: 1531 K/Pid.Sus/2020 above, the panel of judges was correct in their legal considerations. In their decision, witness statements based on statements from investigators can be seen as evidence if they meet the formal provisions stipulated in Article 15 of the Criminal Procedure Code. However, to see the value In proving the judge's belief, it is still possible to raise doubts, especially regarding the objectivity of the witness' testimony. The reason for the Supreme Court's refusal to use the testimony of police witnesses in cases is supported by other evidence, namely:

- a. The statements of 3 (three) other witnesses explained that they did not know who (the owner) of the goods was;
- b. Because the narcotics found were not clear who the owner was, so to find

out who the narcotics owner was, the defendant was forced to confess by being beaten. The Supreme Court accepted the defendant's claim; and

- c. The items found were far from where the defendant was standing, and none of the witnesses saw that the defendant kept or threw the items at the place where the items were found.
- d. Furthermore, the Supreme Court saw that it was not because of these three things that made the Supreme Court decision to reject the testimony of the police witnesses, but rather the subjective belief of the panel of judges. This condition is reflected in the following explanation:
  - It could have happened that the item was stored in advance by the police and the police stopped the defendant just as he was near the item. In many cases of body/house searches, evidence in the form of drugs or psychotropic substances belongs to the police, which has been prepared before making an arrest.
  - The police carry out the trapping method or engineering by placing narcotics near someone about to be arrested, and this is an open secret

whose truth is accepted by the Supreme Court.

- It is common for the evidence to belong to the police, and then by using various tricks, they claim that they found it in the defendant's pocket or other places. Then, the narcotics are being used for extortion against the defendant, who was asked for money by the police for One hundred million rupiahs so that the case could be acquitted, not continued.

Then Article 191 paragraph (1) of the Criminal Procedure Code explains that if the court thinks that from the results of the examination at the trial, the defendant's guilt for the actions he is accused of has not been legally and convincingly proven, the defendant is acquitted because the things accused by the public prosecutor are not proven at trial then from that the judge decided acquittal to the defendant.

The independent assessment of a decision depends on two things:

1. Does not meet the principle of proof according to the law in a negative way. The evidence obtained at the trial was not sufficient to prove the defendant's guilt, and at the same

time, the defendant's guilt which was not sufficiently proven, was believed by the judge.

2. Does not meet the principle of the minimum limit of evidence. The guilt charged to the defendant is only supported by only one piece of evidence, while according to Article 183 of the Criminal Procedure Code, it is sufficient to prove a defendant's guilt that two valid pieces of evidence must be proven.

Based on the description above, the relationship between the suspect and the police, who act as an investigator's witness, was contradictory. The investigator who testified at the trial could be stated as follows:

- a. His testimony was not considered because it was full of subjectivity, namely the interest in punishing the suspect, which could impact his promotion. Then it is alleged that there is a quota for case arrests. It is common for the police to arrest drug users as part of their demands to meet the arrest target which are four for every month.



These things affect the free, honest, objective police testimony as mandated in Article 185 paragraph (6) of the Criminal Procedure Code.

- b. The legal strength of proving the testimony of an investigator witness is free; that is, it depends on the judge. The judge must pay attention to the provisions of Article 185 of the Criminal Procedure Code to assess the testimony of witnesses. Investigators' testimonies need to be scrutinized. This phenomenon reveals the low level of due process of law in law enforcement of narcotics crimes.

## **D. CONCLUSIONS AND RECOMMENDATIONS**

### **1. Conclusion**

Based on the results of the research and analysis above regarding the objectivity of the testimony of the police who arrested drug abusers in the trial evidence according to the Criminal Procedure Code, it can be concluded as follows:

1. If the investigator gives testimony, it can be heard in court as long as it complies with

Article 1, points 26 and 27 of the Criminal Procedure Code. Witnesses based on statements from investigators can be seen as evidence if they fulfil the formal provisions referred to in Article 15 of the Criminal Procedure Code. However, to see their value in proving the judge's conviction, it is still possible to raise doubts, especially regarding the objectivity of the witness' statements. The testimony of the police who arrest and then testify before the trial in the case of a criminal act of drug abuse is not appropriate to be presented as a fact witness. Indeed, this is because it will justify the results of the police investigation who have an interest in the case so that the point he handles is successful in court. Moreover, his statement also can be engineered to discredit or incriminate the accused. Whereas what is needed as a witness is a person who is truly given freely, neutrally, objectively and honestly (Explanation of Article 185 paragraph (6) of the Criminal

Procedure Code). Furthermore, the judge could not consider what the witnesses presented at the trial as evidence. Because, what the witness said was already contained in the evidence when investigating the case, in the case that the arresting police officer was a witness who testified in court, then his testimony is invalid because his position and profession influenced it. In the case of the testimony given by the police as a law enforcement officer, there is no evidentiary value because it contains a subjective assessment influenced by the conflict of interest between his position as a witness and his profession as an investigator.

2. The judge consideration of the testimony of the police who arrested the drug abusers:

a) Witness statements based on investigators' statements can be considered evidence if they meet the formal provisions as referred to in Article 15 of the Criminal Procedure Code.

b) The Supreme Court decided to reject the testimony of the police witnesses but rather the subjective belief of the panel of judges.

c) His testimony was not considered because it was full of subjectivity, namely the interest in punishing the suspect, which could impact to his promotion. Then it is alleged that there is a quota for case arrests. It is common for the police to arrest narcotics users as part of their demands to meet the arrest target every month. These things affect the free, honest, objective police testimony as mandated in Article 185 paragraph (6) of the Criminal Procedure Code.

d) The legal strength of proving the testimony of an investigator witness is free; that is, it depends on the judge. The judge must pay attention to the provisions of Article 185 of the Criminal Procedure Code to assess the testimony of witnesses.

Investigators' testimonies need to be scrutinized. This phenomenon reveals the low level of due process of law in law enforcement of narcotics crimes.

## 2. Suggestion

For the success of making the perpetrators of the drug abuse be held accountable for their legal actions, it is essential that in cases of testimony presented before the trial, supposed the witnesses from the police who arrested the suspect are not the only evidence that is presented because it is very unobjective if the witnesses from the police are present before the trial due to specific reasons, such as subjectivity, conflict of interests, and the nuance of the case engineered or torture used to make the defendants accept their action.

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