

Criminal Aspect False Information Above Oath In The Minute Of Audit (Bap) (Case Study Decision No: 159 K/Pid/2021)

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Abstract—This study specifically discusses: Criminal Aspects of False Information on oath in the Minutes of Examination (22 AP) Case Study Decision No: 159 K/Pid/2021. This study aims to determine the examination of a witness at the level of investigation as outlined in the Minutes of Examination and it is suspected that the witness's testimony is false. This study uses a normative juridical method with a statutory approach. The results of this study indicate that: A witness who gives false information under oath at the examination at the investigation level as outlined in the Minutes of Investigation results in a criminal impact on the witness. So that the research focuses on the logical consequences of drawing the conclusion that a statement is false, then for that false statement, there must be an actual fact, and that fact is undeniable, so that it can be seen clearly the line of difference between the two, which then it can be taken a real conclusion that the information is really false or not.

Keywords—Criminal, False Information, oath, Minutes of Examination

INTRODUCTION

During the investigation process, there are times when a witness testifies under oath, in the sense that it is possible for the witness to be absent during the trial process, so that the investigator in this case will provide an Oath Signed by the witness. To find out someone has given false information or information that is not true is a very difficult act. A person who provides information in an uneasy and unclear condition and is not chronological, it cannot be immediately suspected that the person providing the information has given false information or information that is not true. On the other hand, an information given by someone with good language, chronology, being calm and convincing, does not necessarily mean that someone is giving the true information.

If a witness who has been sworn in gives false information, then the witness is threatened with criminal punishment for committing a criminal act of perjury in accordance with Article 242 of the Criminal Code (KUHP), namely: the laws and regulations order to give information under oath, or to have legal consequences for such a statement, intentionally giving a statement of perjury under oath, either orally or in writing, therefore, is punishable by a maximum imprisonment of seven years; 2) If a false statement

on oath is given in a criminal case and harms the defendant or suspect, the guilty person is subject to a maximum imprisonment of nine years; 3) Equated with an oath is a promise or reinforcement that is required according to general rules or which is a substitute for an oath. 4) The punishment for the revocation of the right is Article no. 1-4 can be dropped.

In the investigation of cases or criminal acts related to giving false information under oath in the Minutes of Investigation (BAP), there is no criminal case that is separated from the evidence of witness testimony. Almost all evidence of criminal cases is always based on examining witness statements, at least in addition to evidence with other evidence, it is still necessary to prove with witness evidence. Criminal law in criminal law is a tool and not a goal of criminal law, which if implemented is nothing but suffering or discomfort for the person concerned, called the convict. The main purpose of criminal law is order, which can specifically be called the prevention of the community from being raped against protected legal interests. Putting a criminal on every prohibition in criminal law (strafbaar feit: criminal act), in addition to aiming for legal certainty and in the context of limiting state power, also aims to prevent (preventive) people who intend to violate criminal law.

Since time immemorial, deliberately giving false information under oath has been seen as a very bad mistake by the community, and until now deliberately giving false information under oath, either orally or in writing, either by himself or his proxies who are specially appointed to This is considered a criminal act, which the legislators have regulated in Article 242 of the Criminal Code. The research method used is a normative legal research method and an analysis of available legal materials to compile a discussion using normative analysis to provide an explanation of legal provisions relating to existing problems and their discussion as the preparation of conclusions systematically. The results of the study show how the scope of the understanding of intentionally giving false information under oath and how the application of Article 242 of the Criminal Code to someone who deliberately gives false information under oath. First, it can be said that a false statement on oath is a statement which is partially or wholly untrue given orally or in writing which is given personally or by his proxies or representatives accompanied by an oath taken before or after. provide information, according to

their respective religions. Second, to apply article 242 of the Criminal Code, to someone who intentionally gives false information on oath, so that that person can be sentenced, the perpetrator's actions must meet the elements of the article. From the results of the study, it can be concluded that false statements on oath are statements that are partly or wholly incorrect, so that in the application of article 242 of the Criminal Code, so that the perpetrators who deliberately provide false information, are sentenced.

The Criminal Code stipulates that "whoever is in a situation where the law dictates to testify under oath", then based on the editorial of the article, it can be seen the imperative nature of a statutory order in the sentence "a situation where the law stipulates to testify under oath", which the law expressly states that it is mandatory for this to be carried out, but this is not the case in the case of examining witnesses by investigators and for the sake of orderly implementation of the procedural law, these things must be obeyed by every law enforcement officers. This research is specifically structured to find out how the legal provisions regarding the crime of false statements in the Minutes of Investigation at the Investigation level and analysis of the decision No: 159K/Pid/2021

RESEARCH METHODS

The legal research method in this thesis uses normative legal research. As is known, the discussion of legal science is known in general, namely two research models, normative legal research and empirical legal research. According to Peter Mahmud Marzuki that normative legal research is "a step to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. (Peter Mahmud M., 2005)

The type of research used in this research is a type of normative research by using a variety of secondary data such as other law court decisions and legal theory. The preparation of this thesis uses normative legal research (positive law, both written and unwritten applicable in Indonesia) which refers to legal research that is centered on the literature as a complement to develop and study the principles in legal science, based on laws and regulations relating to this thesis which analyzes the Court's decision which has permanent legal force.

In this study, using a statutory approach, which is an approach that is carried out by studying and understanding positive law in Indonesia as a provision that regulates criminal responsibility for false statements of perjury and also through an analytical approach to Court decisions that already has permanent legal force related to cases of false information or perjury. The material that has been obtained for this writing and which has been separated will be processed and analyzed according to the descriptive analysis method, which is to provide a systematic, factual and accurate description of certain facts and characteristics contained in the object of research, as well as analyzing the research

object. a court decision that has permanent legal force (Inkracht van gewijsde)

RESULTS AND DISCUSSION

Legal Provisions Regarding the Crime of False Information in the Minutes of Examination (BAP)

The main criminal act in Article 242 of the Criminal Code is a criminal act formulated in paragraph (1). In paragraph (2) it is regulated regarding the severity of the crime, in paragraph (3) it is regulated about what is equated with an oath, while in paragraph (4) it is regulated regarding additional penalties. Regarding the criminal acts formulated in Article 242 of the Criminal Code, information was given by S.R. Sianturi include the following, The name of this crime is called "false oath". The point is, someone gives a false statement under oath (he takes an oath first and then it is confirmed by oath) or under oath (he gives a statement first and then it is confirmed by oath). (Sianturi, 2009)

The elements of the crime of perjury in Article 242 paragraph (1) of the Criminal Code, which are punishable by a maximum imprisonment of 7 (seven) years, are as follows: under oath or have legal consequences for such information; 2. Deliberately giving false information on/under oath, either orally or in writing, personally or by a proxies specifically appointed for that purpose.

Minutes of examination ("BAP") are included in the contents of the case file. Examination of witnesses is included in the realm of investigation. Examinations are carried out by investigators/assistant investigators against witnesses, experts, and suspects as outlined in the BAP signed by the investigator/assistant investigator conducting the examination and the person being examined. In principle, witness statements are recorded according to the words used by witnesses. Then the BAP is read by the investigator or read by the witness himself to ensure that what is contained in the BAP is indeed what the witness said. After that, the BAP is signed by the investigator and the witness as a sign of their approval of the contents of the minutes.

The preparation of the BAP related to the examination of witnesses by investigators in outline is as follows (Yahya Harahap, 2010)

a. Explain the information presented by the witness in the investigation examination, carefully recorded by the investigator in the BAP. The principle of recording witness testimony is that it is recorded according to the words used by the witness.

b. further explained that the minutes containing witness statements were signed by the investigator and the witness. In signing the minutes of examination, two things must be considered: 1) The witness signs the BAP after having first approved the contents of the minutes. Was this approval given after the investigator read it before him or did the investigator order him to read it himself? Yahya Harahap explained, actually the second way is the best, if the witness is good at reading. But if he cannot

read, there is no other choice but to read the minutes before the witness by the investigator; 2) The law provides the possibility for the witness not to sign the BAP. If the witness does not want to sign the BAP, the investigator makes a note of his refusal in the official report. The note is in the form of an explanation of the reasons why the witness refused to sign in the official report. In the event that the witness does not want to sign the official report, he must give a strong reason. For witnesses who are suspected of having sufficient reasons to be unable to attend the trial in court, an oath or promise can be made before the examination is carried out and an official report is made.

Analysis of Decision No: 159 K/Pid/2021

In imposing an acquittal, the judge is of course very concerned about the legal facts that occurred during the trial process and what factors cause a legal event to occur for criminal acts which according to the judge's conscience can lighten the sentence charged and even other things. This mitigating factor can determine the release of all the defendants indicted by the prosecutor. Judges according to Article 1 number 8 of the Criminal Code, Judges are state judicial officials who are authorized by law to judge. Judges as state officials also have a function which, according to Article 33 of Law Number 48 of 2009 concerning Judicial Power, the function of judges is to maintain the independence of the judiciary. Judges must have integrity and impeccable personality, be honest, fair, professional, and have experience in the field of law.

Judges are often in the public spotlight because of decisions that are handed down in accordance with a sense of justice or not because court decisions are an important and necessary aspect to resolve criminal cases. The judge's decision on the one hand is useful for the defendant to obtain legal certainty about his status and at the same time can prepare the next step towards the decision. The Panel of Judges of the Supreme Court in considering making a decision must dig deeply, meaning to explore the material provisions or the actual truth by referring to and basing on the legal facts that occurred during the examination at the Court of first instance.

In this case, the author does not agree with the decision of the Mamuju District Court and the decision of the Supreme Court of the Republic of Indonesia which clearly states that the defendant is free, this is when viewed from the description of the legal facts at the beginning, the role of the defendant in giving written testimony in the Minutes of Investigation is very detrimental. the defendant in the initial case (theft), namely the defendant, Irwansyah, where the Defendant (in this case, a false statement) gave testimony which turned out to be not in accordance with the facts, so that the defendant's testimony (in this case a false statement) was very detrimental to Irwansyah's brother (the theft case), which if the defendant's testimony (false statement) is true, then it is possible that Irwansyah's brother (the theft case) will be released.

This is, the Defendant (false statement) because he did not mention the name of Fajrin alias Sakti who brought the stolen motorbike to Witness Ma'ruf's boarding house but called Witness Irwansyah as the perpetrator, and this is in accordance with the actual legal facts, so the author agrees with the Prosecutor The Public Prosecutor that the defendant (false statement) has deserved to be sentenced as regulated and is threatened with punishment in Article 242 paragraph (2) of the Criminal Code. Quality decisions reflect the expertise and ability of judges in deciding cases. The authority to decide cases rests with the judge as the holder of judicial power whose independence is guaranteed by the 1945 Constitution. As a result, in law enforcement if the judge only pays attention to legal certainty, the element of justice will be ignored, because in his decision the judge only applies the law and the results is a formal truth. In this case, the judge only needs to look for and find the law in the law to be applied in concrete events that have been proven in the judicial process, no matter whether the legal provisions contained in the articles of the applied law fulfill a sense of justice or not, useful or not. not for justice seekers.

CONCLUSION

a. Deliberately giving the false information above is expressly stated in Article 242 of the Criminal Code, because in examining a criminal case in court, it cannot be separated from the examination of witnesses to provide information about what the witness saw or experienced himself, where before the witness giving the testimony of the witness is obliged to take an oath/promise according to the religion he adheres to, so that the oath here is a guarantee that the information he utters is true and nothing more than the truth.

b. Regarding the decision of the Mamuju District Court and the Supreme Court of the Republic of Indonesia which clearly stated that the defendant was free, this can be seen from the description of the legal facts at the beginning, the role of the defendant in giving written testimony in the Minutes of Examination the consequences were very detrimental to the defendant in the initial case (theft),

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