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Judges' considerations in passing decision based on the results of local inspection

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Abstract

This research sought to understand and compile a summary of the local inspections that judges carry out in criminal cases. The practice of criminal justice in Indonesia is evolving, and local inspections are increasingly occurring in both civil and criminal cases. The Criminal Procedure Code does not specifically prohibit local inspections during the judicial proof process in criminal cases, so this research is crucial. This study employs a statutory approach in its normative research methodology. The findings of the local inspectors' study constitute legal discovery (*rechtvinding*), which judges do in order to verify the evidence and uncover legal facts in order to strengthen their confidence in making conclusions about the criminal cases they are considering. The right of a judge to perform local inspections is facultative and discretionary in nature, meaning that it is not innately binding and has the status of an executor, the execution of which is subject to the judge's discretion.

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1. Introduction

Material criminal law is not the only reference in criminal law enforcement in Indonesia. Thus, there is a formal criminal law which includes various rules governing efforts to maintain and maintain material criminal law to create legal certainty for many parties (Irham Andika, 2019:1-3) ^[1]. KUHAP (known as Kitab Undang - Undang Hukum Acara Pidana: Code of Criminal Procedure) is a law that acts as a reference when trying to enforce formal criminal law. Criminal law enforcement in Indonesia can bring positive changes thanks to the enactment of the Criminal Procedure Code. However, there are several flaws and gaps in Indonesia's implementation of the Criminal Procedure Code. What is meant by the weaknesses and shortcomings of the Criminal Procedure Code is that there is a legal vacuum and there are various articles that are not aligned with the implementation of law enforcement that affect the implementation of criminal law in Indonesia.

There are logical consequences for updating the contents of the Criminal Procedure Code to according the various weaknesses and shortcomings of the Criminal Procedure Code described above. A way to enforce criminal law is to update the contents of the Indonesian Criminal Procedure Code. Thus, law enforcement practices can run ideally if the Criminal Procedure Code has an update. There are changes in law enforcement efforts at the applicative or application stage which is the responsibility of the judiciary as one of the efforts to reform the Criminal Procedure Code that can be done. One of the sub-systems of criminal justice is the courts. Consequently, the court's position in Indonesia allows for the creation of criminal law enforcement.

The judge's decision is a product of the Court that can facilitate a sense of expediency, certainty, and legal justice for the community. Various stages of the trial in line with the Code of Criminal Procedure resulted in the judge's decision being handed down in Court. However, there are various rules in the Criminal Procedure Code that cannot be applied in direct court because they are still abstract and generally applicable. Thus, *rechtsvinding* and legal discovery are important roles that judges have in carrying out trials.

Legal discovery is the activity of individualization and concretization of general properties based on certain concrete phenomena (*das sein*) (Sudikno Mertokusumo, 2001: 37) ^[2]. In the trial of criminal cases in District Courts in Indonesia, the trial process in criminal procedural law often requires judges to find concrete laws. These cases can be seen in a very hotly reported case, namely the premeditated murder case committed by Ferdy Sambo. When presenting evidence in court to justify for criminal cases, the judge examined five pieces of evidence in accordance with the provisions of Article 184 of the Code of Criminal Procedure. On the other hand, local inspections are also carried out by judges in the case.

The local investigation into the criminal act of premeditated murder committed by Ferdy Sambo was conducted on January 4, 2023, at Ferdy Sambo's residence. (Amini, T.W. and Fauzi, A., 2023: 90) ^[3].

The discovery of law is the active role of judges in seeking substantive truth, namely by carrying out local inspection in the trial process of criminal cases. The absence of regulations that address local inspections and their procedures and scope in the Code of Criminal Procedure is a reason for the discovery of the law. Proof of criminal cases at trial. In order to support evidence in criminal cases at trial, it is important to conduct local inspections. Although local inspections are usually related to civil procedural law, in criminal cases local inspection can also be carried out. Article 153 HIR is a rule in the civil procedure code that addresses *gerechtelijke plaatsopneming* or Local Inspection (Maria Rosalina, 2018: 3) ^[4].

As an institution that has the authority to hand down decisions, judges must consider various factors in deciding a case. One aspect that influences judges to determine criminal convictions is the results of local inspection at crime scenes. Local inspection at the crime scene is carried out to collect evidence related to the case at hand (Efendi Nasution & Hasan Ismail, 2018: 4) ^[5].

This research is an original scientific work that hopes to be able to contribute and have a role in the process of adding or developing science. Based on the explanation above, breakthroughs in criminal procedural law can be made by making judges active in trials. This matter is carried out in order to apply so that the criminal trial process can carry out local inspection. Therefore, there is a need to create legal certainty by reforming the criminal procedure law that discusses the procedures and scope of local inspection in criminal trial processes. Therefore, the author made a study entitled: "Judges' Considerations in Passing Decision Based on the Results of Local Inspection".

Problem statements set by the author according to the background description of the problem above are, how does the local inspections function in the legal consideration of criminal case decisions and what is the evidentiary power of conducting local inspections. This research article has a descriptive nature of analysis because the research conducted aims to analyze the rules of legal certainty in local inspection in the realm of criminal acts. Meanwhile, researchers carry out literature studies and normative juridical approaches as the type of approach carried out in this study so that researchers will examine various written regulations from various applicable laws and relate to local inspections on criminal acts in Indonesia. The process in carrying out this research is that researchers will review every written data/information related to legal provisions from many sources so that it can be published in journals that can be accessed publicly and openly. On the other hand, various general legal reviews through print media, legal reports, legal journals, books that discuss legal theory, and various applicable laws and regulations are sources cited by researchers (Ali & Zainuddin, 2009: 30) ^[6].

2. Method

This research is a normative legal research (known as juridical normative) (Soerjono Soekanto and Sri Mamuji, 2004: 23-24) ^[7]. This research uses literature data in the form of books, regulations, expert opinions, and reviewing various scientific journals. Normative legal research method or

library legal research method is a method or method used in legal research conducted by examining existing library materials. The normative legal research method is defined as "a method of research on laws and regulations both in terms of the hierarchy of laws and regulations (vertical), as well as the harmony of laws and regulations (horizontal)" that are relevant to the legal issues that are the focus of the research. Besides it, this research uses several approaches that are relevant to the legal issues that are the subject of discussion. The approaches are statute approach and conceptual approach. The statutory approach is used because the legal issues of this research are directly related to the provisions of written regulations, especially in this case written provisions relating to or related to the relevant provisions. Meanwhile, the conceptual approach is used because the legal issues in this thesis are also related to legal concepts or notions. (Benuf, K. & Azhar, M, 2020: 23-24) ^[8].

3. Analysis and Discussion

3.1. The Function of Local Inspection in Legal Considerations of Criminal Case Verdicts

Local inspection is an inspection at the scene of a criminal case conducted by a Judge or Panel of Judges and the parties (Prosecutors and defenses and parties considered important for it). Legal discovery can be done by the Judge to find legal facts by clarifying a piece of evidence contained in the trial, this is also known as local inspection. Before deciding the case at hand, the judge can add confidence and remove doubts by applying local inspection. However, local investigations do not apply to every criminal case. Local inspection can be carried out if the judge does not have high confidence in assessing the criminal case to be decided as a result (Maria Rosalina op.cit. 4-5) ^[9].

There is SEMA (Surat Edaran Mahkamah Agung: Supreme Court Circular) No. 7 of 2021 concerning Local Inspection and Article 153 HIR (180 Rbg/211 Rv) as provisions governing Local Inspection in civil cases, which does not apply in the criminal realm. On the other hand, criminal cases can also use the local inspection as an effort to find laws by judges in trial practice in Indonesia. This provision can be seen in various decisions in criminal cases whose evidentiary efforts are carried out through local inspection, namely Decision No. 796/Pid. B/2022/PN JKT. The decision was about the criminal act of premeditated murder that had shocked Indonesia, namely the premeditated murder committed by a former high-ranking National Police officer, Ferdy Sambo.

The breach applied by the Judge to the criminal procedure law is seen in the inspection of the above criminal court activities. This happens because there is no definite regulation governing the application of local inspections, which is not found in the Criminal Code Procedure. Legal considerations of case decisions and the trial process of criminal cases in Indonesia can be used juridically to analyze the background of local inspection policies on criminal procedural law in Indonesia. Before deciding a case, the Judge may increase his conviction through local inspection in criminal cases assisted by the clerk of trials.

In the criminal trial process, there is no prohibition on conducting local inspections based on the above legal facts. This also applies to MARI (Mahkamah Agung Republik Indonesia: Supreme Court of Indonesia) Decision No. 2437 K/Pid.Sus/2011 where there is the use of crown witnesses in trials even though there is no rule that discusses this in the

Code of Criminal Procedure. The above incident is also supported by the Circular Letter of the Attorney General's Office No B.69/E/2/97 concerning the Law of Evidence in Criminal Cases.

Local inspections may be conducted on a variety of instances, such as cases of theft through certain attempts, such as tampering, dismantling, or climbing, murder by mutilation, murder by premeditation, and cases causing injury or death on the road (Izzati & Ratih Mannul, 2012: 5) ^[10]. The litigants, a clerk, and one of the judges are parties who can carry out local inspections by visiting the place of the object of the case. The minutes of the local inspection contain the identification of the Judge or Panel of Judges, Prosecutors, Defense, defendants, witnesses, and clerks and the facts of the local inspection at the scene of the criminal case obtained, such as the addition of information, determination of the submission of evidence.

To maintain clarity and continuity in the judicial process, it is important to fully outline the legal considerations in a criminal case decision. In legal considerations, there are various matters that must be described such as:

1. The facts and circumstances found in the course of examination in court must be clearly outlined in the trial.
2. The basis for determining the guilt of the accused is the evidence resulting from the examination process at trial.

In order to support conclusions in the judge's consideration, the description of evidence, circumstances, and facts in legal considerations must be reviewed descriptively and reviewed with reasonable and logical reasons (Yahya Harahap, 2010: 361-362) ^[11].

Thus, the law of criminal case verdicts will refer to various matters in the local inspection function. Meanwhile, adding information to the judge, determining the submission of evidence, and increasing the judge's confidence are some of the functions of local inspection. The basis of all inspections in court hearings, including local inspection, is the basis for the judge's conviction to consider legal decisions in criminal cases in order to ensure justice, legal certainty, and expediency.

The results of this local inspection can be strong evidence in support of the public prosecutor's demands or the defendant's defense. In considering results of the local inspection, the judge must pay attention to several things:

1. First, the judge must ensure that the local inspection is conducted professionally and accurately. This is done so that the evidence collected can be used as a strong basis for deciding the case.
2. Second, the judge must consider whether the evidence gathered at the local inspection is in harmony with the facts found at the court. If discrepancies are found between the evidence collected at the local inspection and the facts presented in court, the panel of judges must ensure that the discrepancy can be clearly explained.
3. Third, the judge must pay attention to whether the evidence gathered at the local inspection is conclusive or not. If the evidence is conclusive, meaning that it can prove the facts on which the public prosecutor or the defendant's defense is strongly based, then the judge may consider rendering a decision based on that evidence.
4. Fourth, the judge must ensure that the evidence gathered at the local inspection does not contradict other evidence that has been found at trial. If there is a discrepancy between the evidence gathered at the local inspection and

other evidence that has been found at trial, the judge must ensure that the discrepancy can be clearly explained.

By considering these factors, judges can decide a case appropriately and fairly based on the results of local inspection at a crime scene.

Local inspection efforts must refer to the principle of "every process must refer to applicable legal provisions" even if it has received "legal justification". This is done so as not to give losses to a litigant. However, until now there has been no PERMA (Peraturan Mahkamah Agung: Regulation of the Supreme Court) or SEMA (Surat Edaran Mahkamah Agung: Circular Letter of the Supreme Court) that regulates the above provisions so there is a need to formulate Standard Operating Procedure that can act as a reference for the implementation of local inspections.

Guidelines for uniformity in the implementation of local inspection in the realm of criminal procedure law can be owned if the government can release a reform policy in the criminal procedure law. In the procedures and scope of local inspections, there is a clear need to seek to reform the provisions on local inspections. If based on the judge's judgment a local inspection is required, then the scope of local inspection on the criminal procedure law can be implemented. Thus, the determination of the submission of evidence, testimony to the judge, and increasing the judge's conviction is the purpose of conducting a local inspection in the realm of criminal procedural law.

There are six stages in the local inspection process that can be carried out, such as

1. The judge can begin the trial inside the courtroom. Furthermore, local inspections may be initiated if the judge has postponed/suspended the trials;
2. Furthermore, defendants accompanied by legal counsel, public prosecutors, clerks, and the panel of judges can go directly to the location of the local inspection object;
3. The local inspection trials can be officially opened when the judge in charge of the local inspection has arrived at the place.
4. Various parties on site can submit information related to the local inspection object based on permission and questions from the judge. Witnesses may testify under oath if the parties have witnesses to give testimony about the object of the local inspection.
5. The judge may close the local inspection trials if the local inspection has been completed.
6. Trials that are being suspended may be announced for adjournment when the parties and the panel of judges have returned to the courtroom.

The trial process in the courtroom has no difference in the process of implementation when compared to the local inspection stage. In the local inspection trials, there are various matters that fully apply to various parties, such as every matter related to principles, rights, and rules that must be upheld. There is an expectation in local inspection practices in criminal cases so that there is uniformity and there is no norm vacuum in the implementation of local inspection. The above serves to facilitate legal certainty for Indonesian citizens and to ensure that judges as one of the sub-elements of criminal justice in Indonesia can enforce the law more effectively.

3.2 The Strength of Evidence in the Implementation of Local Inspection

In the process of examining criminal cases in government, evidence is one of the important things. Getting substantial truth is a function of criminal procedural law so the inspection of criminal cases plays an important role in proving various things in criminal procedural law. Judges can apply the most basic ways to find truth in a case so that judges can increase confidence to give decisions in solving a case or determine whether or not the defendant is true in the matter he is accused of (Fachrul Rozi, 2018: 19-33) ^[12].

In civil procedural law, there is supporting evidence from the evidence that can be used, namely proving local inspection. The power of local inspection as evidence in civil disputes is independent depending on the judgment of the Judge (Marselinus Ambarita, 2021: 385-393) ^[13]. Meanwhile, judges in criminal procedural law can make discoveries or legal breakthroughs (*rechtsvinding*) even though it is not stipulated in Article 184 of the Code of Criminal Procedure, such as applying local inspection as evidence of trials. Judges can obtain useful clues to make decisions if they can review the relevant location in a criminal case, namely through local inspection. Thus, related evidence will support the validity of the evidence that will be used by the judge in determining the trial decision. There is a positive response given by the community in the implementation of local inspections regardless of whether local inspections can be used as evidence. The community's response is that the court is serious about examining a case. So even though in the judicial process later the results of the local inspection are not directly used as evidence, it can strengthen the evidence examined at the scene of the case.

The judge's ruling on the veracity discovered during the court trial and local inspection is final and binding. However, the Judge can freely assign the value of the evidentiary power so that the nature of the increase has uncertain value. Thus, the variable value of the strength tied to the local inspection during litigation can clarify the strength of the local inspection. The value of the power resulting from the local inspection at the scene of the crime can be used by the Judge as consideration and to give confidence in handing down the verdict. The result of the local inspection at the crime scene is only a statement that provides further explanation of the object of the case aimed at fulfilling various aspects of the alleged criminal behavior (Sriyono, 2021: 374-391) ^[14].

The conduct of local inspection is very rarely used in criminal justice processes, but as an example of the criminal justice process that implements the implementation of on-site inspection is the crime of premeditated murder committed by Ferdy Sambo. In this case, the panel of judges reviewed the scene of the premeditated murder crime against Brigadier Joshua to see the crime scene and as a consideration for the Judge before deciding the case. In the implementation of the local inspection, the Panel of Judges will look at the position during reconstruction in the Minutes of Examination (BAP: Berita Acara Pemeriksaan), whether it is in accordance with the information given by witnesses and defendants.

In this context, the results of the conduct of local inspection are facts obtained during the trial process and can be the basis for consideration. Evidence, expert testimony, and witness testimony during the trial may be intertwined to take into account the law regarding the local inspection conducted. The panel of judges can use these facts as legal considerations to prove whether the defendant acted based on the charges filed

by the public prosecutor. Judges can act actively to obtain material truth in a case, even though local inspections are not regulated in the Criminal Procedure Code.

4. Conclusion

The judge has the authority to conduct local inspections to clarify evidence presented at trial, to find relevant legal facts. A clerk that in charge of drafting the minutes will assist the Judge or Panel of Judges in carrying out local inspection, where parties, defense attorneys, and prosecutors are also present in the examination process. Some examples of cases that can use local inspection are theft by tampering, dismantling, or climbing, murder by mutilation or premeditation, and various cases causing injury or death on the road. The function of a local inspection is to provide additional information to the judge, ascertain the submission of evidence, and enhance the judge's confidence. Criminal procedural law's goal is to find material truth so that in the examination of criminal cases, evidence plays a role as the most important thing in criminal procedural law. So the existence of evidence of the Local Inspection can be a legal consideration by the Panel of Judges to prove whether the accused is acting based on the charges charged by the public prosecutor, even though the local inspection is not regulated in the Criminal Procedure Code. Researchers suggest several things to several parties, namely For the Government and Law Enforcers, there should be a formulation in the renewal of the Criminal Procedure Code in detail that regulates the procedures and scope of local inspection in the realm of criminal procedure law in order to create legal certainty. In examining cases, judges are expected to examine the evidence carefully and carefully on various litigants. The judge will link various available evidence to achieve clarity on the facts that support whether the plaintiff or defendant has a strong basis because, in court proceedings, it is not always the plaintiff who is responsible for proving his argument exclusively. One of the uses of evidence in criminal trials is through local inspection, where the knowledge of the judge can also be one form of evidence used.

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