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The Legal Status of Circumstantial Evidence in the Context of Criminal Cases in Indonesia

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Abstract: In practice, there are several instances of criminal decisions that are not in accordance with the law. In such instances, the judge interprets the law or legal findings based on circumstantial evidence. As a result, the action taken does not achieve the highest degree of justice and legal certainty in a decision. This is because the decision is not based on the minimum requirements of two pieces of evidence that must be met in terms of evidence to impose a sentence. The objective of this research was to analyze the legal status of circumstantial evidence in the context of criminal cases. Our research findings indicate that the philosophy of circumstantial evidence, as it pertains to criminal procedural law, represents a form of evidence that can be considered by judges in relation to the absence of facts that are not directly visible by eyewitnesses. This evidence is intended to provide a comprehensive depiction of the truth of an event, thereby facilitating the acceptance of a reasonable account of events. Establishing circumstantial evidence is distinct from providing instructions, however. To do so, one must obtain clues from facts presented at trial in the form of witness statements, letters and statements of the accused. The *ius constituendum* application of circumstantial evidence in the process of proving a criminal case is to provide the judge with the authority to utilise circumstantial evidence in the process of proving a crime as an additional legal means of evidence in sentencing. The role of indirect evidence in the imposition of criminal penalties is a doctrine that is confined to be the domain of legal experts.

Keywords: Legal Status; Circumstantial Evidence; Criminal Cases

INTRODUCTION

In imposing criminal sanctions on the defendant, the judge must be guided by the provisions of Article 183 of the Criminal Procedure Code which in essence, stipulate that the judge must base the sentence on at least two valid pieces of evidence and be sure that the defendant committed the crime.[1] Article 184 paragraph (1), delineates the types of valid evidence, which are regulated in Article 184 paragraph (1). These include: a. testimony from a witness; b. information provided by an expert; c. a letter; d. an indication; e. a statement from a defendant."

[1] Adam Bastian Mardhatillah and Ahmad Mahyani, "Bukti Tidak Langsung Sebagai Dasar Hakim Menjatuhkan Pidana," *Mimbar Keadilan* 12, no. 1 (2019): 59–66.

The examination of evidentiary is of considerable importance in the context of criminal proceedings.[2] It is notable that evidentiary principles and procedures differ between criminal and civil cases. In the former, the objective is to ascertain the material truth, whereas in the latter, the aim is to determine the formal truth.[3] Evidentiary is a crucial component of legal proceedings, as it it serves to verify the veracity of factual assertions.[4] In a legal system that is founded upon the principles of the rule of law (*rechtstaat*), equality before the law and due process of law, the evidentiary is a fundamental aspect of the enforcement of the law.
Law enforcement is the process of implementing efforts to enforce or function legal norms in real terms as guidelines for actors in traffic or legal relations in community and state life. Law enforcement is intended to improve order and legal certainty in society. This is done, among other things, by regulating the functions, duties and authorities of institutions tasked with enforcing the law according to the proportion of their respective scopes, and based on a good cooperation system and supporting the goals to be achieved.[5] Evidentiary becomes the determinant for the law of an event, legal action, legal relationship, even to determine the guilt or innocence of a person and then impose a sentence on that person.[6] Evidentiary is the central point of case examination in the court. Evidentiary is the provision which contains inheritance and guidelines of the methods that are justified by the law to prove the guilty indictment of the accused. Evidentiary is also a provision regarding the evidence that is justified by the law and may be used by the judges to prove the guilt.

The law of evidence is part of the criminal procedure law which regulates various types of evidence which are legal according to the law, the system in evidentiary, the conditions and procedures for submitting the evidence and the judge's authority to accept, reject and judge the evidentiary. Evidentiary of whether the accused commits the criminal act is the most important part of a criminal procedure. In this part too, human rights are at stake. What if a person who is being accused is found guilty of committing the accused act based on the existing evidence and the conviction of a judge while it is not the truth? Because of this, criminal procedural law aims to seek the material truth, contrary to civil procedural law in which it only depends on the formal truth.

The Criminal Procedure Code (KUHAP) does not provide a clear understanding of the meaning of evidentiary, but they provide an explanation of the evidence contained in article 183 which is as follows:[7]

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[2] Fachrul Rozi, "Sistem Pembuktian Dalam Proses Persidangan Pada Perkara Tindak Pidana," *Jurnal Yuridis Unaja* 1, no. 2 (2019): 19–33, https://doi.org/10.35141/jyu.v1i2.486.
[3] Udin Silalahi, "Pembuktian Perkara Kartel Di Indonesia Dengan Menggunakan Bukti Tidak Langsung (Indirect Evidence)," *Jurnal Yudisial* 10, no. 3 (2017): 311, https://doi.org/10.29123/jy.v10i3.216.
[4] Hendri Jayadi Pandiangan, "Perbedaan Hukum Pembuktian Dalam Perspektif Hukum Acara Pidana Dan Perdata," *To-Ra* 3, no. 2 (2017): 565, https://doi.org/10.33541/tora.v3i2.1154.
[5] Santoyo, "Penegakan Hukum Di Indonesia," *Jurnal Dinamika Hukum* 8, no. 3 (2008): 199–204.
[6] Mahmul Siregar, "Bukti Tidak Langsung (Indirect Evidence) Dalam Penegakan Hukum Persaingan Usaha Di Indonesia," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018): 187–200, https://doi.org/10.33059/jhsk.v13i2.910.
[7] Dwi Herman Sucipta and I Made Wirya Darma, "Amicus Curiae As the Development of Evidence in Criminal Procedure Code," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 17–30, https://doi.org/10.23920/jbmh.v7i1.576.

"A judge cannot convict a person unless there are at least two legal pieces of evidence, and he is convinced that the criminal act actually occurs and that the accused is the one that commits the act."

Indication can be defined as the thing that can be used to prove the truth of an event in the court.[8] In the evidentiary process, if the evidence that has been presented is not sufficient to prove whether the accused is guilty or not, then the judge can use his independence to evaluate the strength of the evidence with the indication in certain circumstances.[9]

The history of the development of criminal procedural law shows that there are several systems or theories to prove the accused. This system or theory of evidentiary varies according to time and place (country). There are four theories of evidentiary which can be described as follows:[10]

System or theory of evidentiary which is positively based on the law (*Positief Wettelijke Bewijstheorie*). The system or theory of evidentiary which is positively based on the law (*Positief Wettelijke Bewijstheorie*) is based solely on law. It means that if an act has been proven in accordance with the evidence mentioned by law, then the judge's conviction in this system is not necessary at all. This system can also be called the formal evidentiary theory (*formale bewijstheorie*). This system focuses on the existence of legal evidence according to the law. Although the judge is not sure of the accused's guilt, if there is evidence that is valid according to law, then the judge can sentence the accused.[11]

Wirdjono Prodjodikoro rejects this evidentiary theory to be adopted in Indonesia, he states that how can a judge establish the truth other than by expressing his conviction about the truth. Moreover, the conviction of an honest and experienced judge may very well be in accordance with the society's beliefs.

The system or theory of evidentiary based solely on the judge's conviction (*Conviction in Time*).

This theory or system gives the freedom to the judge that it is difficult to monitor. Therefore, in this case, the accused or his lawyer is difficult to defend. According to this system, it is considered sufficient that a judge bases the evidence of a situation on his conviction alone and is not bound by any rules. In this system, the judge can use his conviction in determining whether a situation should be considered proven. This system gives judges too much freedom, so that they are difficult to monitor. In addition, legal counsel or the accused will be difficult to defend. In this case, the judge can convict the accused solely based on his conviction that the accused has been proven to have done what he is accused of. This system of evidentiary is widely used by the countries that

[8] I. Rusyadi, "Kekuatan Alat Bukti Dalam Persidangan Perkara Pidana," *Jurnal Hukum PRIORIS* 5, no. 2 (2016): 128–34, https://doi.org/10.25105/prio.v5i2.558.
[9] Susanti Ante, "Pembuktian Dan Putusan Pengadilan Dalam Acara Pidana," *Lex Crimen* II, no. 2 (2013): 98–104.
[10] Rusyadi, "Kekuatan Alat Bukti Dalam Persidangan Perkara Pidana."
[11] Susanti Ante, "Pembuktian Dan Putusan Pengadilan Dalam Acara Pidana," *Lex Crimen* 2, no. 2 (2013): 100.

use the common law system or the countries that use a jury court system such as in the United Kingdom and the United States.[12]

The system or theory of evidentiary based on the judge's conviction on logical reasons (*La Conviction Raisonnee*). This theory is considered as a mediator because this theory is a combined concept of a positive evidentiary system and the judge's own conviction system. Judges' decisions are based on conviction up to a certain time limit which is supported by clear juridical arguments.[13]

According to this system or theory, the judge can decide if someone is guilty or not based on their conviction, in which the conviction is based on valid evidentiary and is accompanied by a conclusion based on certain evidentiary rules. This system or theory of evidentiary is also known as free evidentiary, because the judge is free to state the reasons of his conviction.

The theory of evidentiary which is negatively based on the law (*Negatief Wettelijk*).

This theory is a mixture of positive statutory evidentiary system and *Conviction Raisonnee*'s evidentiary. The formulation of this system of evidentiary is whether or not the accused is guilty is determined by the judge's conviction based on the method and also by valid evidences.

According to the provisions of Article 183 of the Criminal Procedure Code, evidentiary must be based on law in which a judge can impose a sentence on someone if there is a valid evidence and also the judge's conviction which is obtained from the evidence.

Before the Criminal Procedure Code is enacted, the provision that has been stipulated in the Basic Law on Judicial Power (Law No. 14 of 1970) Article 6 is as follows:

"No one can be convicted of a crime unless the court convicts them because of a valid evidentiary according to the law that has the conviction that someone who is responsible for the criminal act has been proved guilty of an act alleged to that person."

The system of evidentiary which is negatively based on the law (*negatief wettelijk*) should be defended for two reasons. The first reason is that there should be the conviction of the judge regarding the guilt of the accused. Therefore, the judge can impose a criminal sentence, and the judge should not be forced to convict a person while the judge himself is not sure of the accused's guilt. The second reason is that the system is useful if there are rules that bind the judges in formulating their conviction, so that there are certain standards that must be obeyed by the judge in conducting the trial.

[12] Fira Mubayyinah, "Perbandingan Sistem Hukum Pembuktian Dalam Penanganan Perkara Tindak Korupsi Dengan Perkara Tindak Pidana Lainnya," *AL-HIKMAH Jurnal Study Keislaman* 7, no. 1 (2017): 36–44, https://doi.org/https://doi.org/10.36835/hjsk.v7i1.3082.

[13] Nurlaila Harun, "Proses Peradilan Dan Arti Sebuah Keyakinan Hakim Dalam Memutus Suatu Perkara Di Pengadilan Agama Manado," *Jurnal Ilmiah Al-Syir'ah* 15, no. 2 (2017): 167–92, https://doi.org/10.30984/as.v15i2.479.

Therefore, at least two valid evidences are needed to impose a sentence on the accused, so that the judge has the conviction that a criminal act does occur and that the accused is guilty of committing it. In addition to the evidence listed in the Criminal Procedure Code, we have identified the presence of indirect evidence, also known as circumstantial evidence. However, Circumstantial Evidence is still rarely used by the system of criminal evidence in the courts in Indonesia because its validity is often questioned by the public. Circumstantial Evidence itself has been used in proving the civil cases in Indonesia, namely in proving the dispute of business competition in a cartel case.[14]

Certainly, the case that happened in 2004 still remains in some people's minds. At that time, a human rights activist, Munir Said Thalib, died on a flight from Jakarta to the Netherlands. After an autopsy was conducted, Arsenic poison was found in Munir's body. The evidence was that there were no witnesses that saw who gave Munir the poison, so the Central Jakarta District Court Panel of Judges found Pollycarpus guilty of assassinating Munir by using an indirect evidence or Circumstantial Evidence. A similar case also occurred in 2016. It was a case regarding the planned murder which was done by Jessica Kumala Wongso. She murdered her friend Wayan Mirna Salihin by using cyanide poison. The poison was found in Mirna's Vietnamese iced coffee. It was considered very difficult to find out who killed Mirna in this case, because there was no witness who saw her pouring the poison into the iced coffee that Mirna drank.

The panel of judges at the Central Jakarta District Court used Circumstantial Evidence in deciding the case of Jessica Kumala Wongso, who was finally found guilty of the planned murder of Wayan Mirna Salihin.[15] However, many irregularities were found in the trial of Munir's death and the trial of the planned murder case by Jessica Kumala Wongso, so that we are interested in discussing about the Circumstantial Evidence in Indonesia.

Based on the background, we have identified two key issues that warrant further examination. The first of these is the regulation of the use of Circumstantial Evidence in resolving the criminal cases in Indonesia. The second is the application of Circumstantial Evidence in the handling criminal cases.

METHOD

This study employs a normative juridical research method, utilizing the statutory approach as a means of investigation. The data employed in this study is of a secondary nature, derived from three distinct categories of legal materials: primary, secondary, and tertiary. The primary legal materials used in this study are the 1945 Constitution of the Republic of Indonesia, Law No. 8 of 1981 concerning Criminal Procedure Law, Law No. 4 of 2004 concerning Judicial Power. Secondary legal material comprises books and scientific papers

[14] Silalahi, "Pembuktian Perkara Kartel Di Indonesia Dengan Menggunakan Bukti Tidak Langsung (Indirect Evidence)."

[15] Karunia Pangestu, Heru Suyanto, and Rosalia Dika Agustanti, "Application of Circumstantial Evidence in Criminal Laws in Indonesia," *Jurnal Hukum Novelty* 12, no. 1 (2021): 54–66, https://doi.org/10.26555/novelty.v12i01.a16996.

pertinent to this research. The tertiary legal material is obtained through internet data related to this research. The data obtained and collected are analyzed using a normative approach. This approach involves the collection, inventory and analysis of data using the theoretical approach and principles of criminal law that refer to legislation.

DISCUSSION

The Regulation of the Use of Circumstantial Evidence in Resolving Criminal Cases in Indonesia

Circumstantial Evidence or indirect evidence is a kind of evidence in which the relationship between the facts that occur, and the available evidence can only be seen after drawing some certain conclusions. Indirect evidence must have a rational relevance, so that it can be used in the court. It will make the facts proven clearly.

It has been argued, the law does not clearly mention indirect evidence or Circumstantial Evidence. However, this indirect evidence can be referred as one of the valid evidences according to the Criminal Procedure Code, namely the indication. Indication is an act, event, or situation in which because of its compatibility, either between one and the other or with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is. In Paragraph 2, that action, event, or condition can only be obtained from: a. witness' statements; b. letters; and c. statement of the accused (article 188 KUHAP).

According to Yahya Harahap, the formulation of the article is difficult to understand. Perhaps the formula can be written by adding a few words to it. With the addition of these words, it can be written as follows:

"An indication is a signal that can be withdrawn from an action, event or condition in which the signal has compatibility between one another and the signal has compatibility with the crime itself, and from the corresponding signal, it produces or realizes a guideline that forms the reality of the occurrence of a criminal act and that the accused is the one who is guilty."

Contrary to other evidences, namely witness' statements, expert's statements, letters and statements of the accused, the indication is obtained from the statements of the witnesses, letters, and statements of the accused. It means that the indication is not a direct evidence (indirect *bewijs*). Therefore, many people think that indication is not an evidence.

The role of the indication as the determinant of whether or not the accused will be sentenced cannot be ignored, for example, evidence from the expert's statement, documentary evidence as well as evidence from the accused's statement.[16] According to Eddy O.S. Hiariej, in the context of the legal theory of evidence, the indication is a circumstantial evidence or indirect evidence which is complementary or it can be called as accessories evidence. It means that an indication is not an independent evidence, but it is a

[16] Tindak Pidana Perkosaan, "Lexetsocietatis_dk28,+1.+Mutiara+Manaroinsong" IV, no. 9 (2016): 5–14.

secondary evidence obtained from the primary evidence, in this case they are statements of witnesses, letters and statements of the accused.

The main tasks of the judges are to examine, adjudicate and settle the cases presented to them, so that the judges only have one choice which is to examine and decide on the case to assist the justice seekers. The judge gives a decision based on the justice. This means that the judge must judge according to the law, so that the judge must be familiar with the laws and events, and a judge is also considered to know the law on various concrete events (*ius curia novit*). In using the indication as evidence, a judge must look for a relationship between an act, incident or situation that occur in order to draw a conclusion, so that the judge can decide whether or not the criminal act committed by the accused is proven or not. In this case, according to article 183 KUHAP, a judge must be careful in implementing a decision through the indication.[17] If not used appropriately, the results will be arbitrary, because these decisions are dominated by excessive and subjective judgments. The judge has full authority and subjectivity of the indication when examining the case.

The judge can draw the conclusions about the evidentiary as an indication and he must also relate one evidence to another. Therefore, the indication can only be used if the available evidence cannot convince the judge about the occurrence of a criminal act and that the accused is the one who commits it.[18] Indication is used if other evidences (letters, witness' statements, the accused's statements) have not convinced the judge. Thus, the existence of indication will strengthen the judge's conviction that it is true that a criminal act has occurred, and the accused is indeed the perpetrator.

If the judge is not yet convinced, there are three possibilities that cause it. First, the existing evidence does not meet the minimum requirements, namely two pieces of evidence. Second, it has fulfilled the minimum of evidence but has produced facts that each stands on its own. If this is the case, the indication can meet the minimum requirements of evidence. Third, valid evidence is sufficient, but the judge is not yet sure about the occurrence of a criminal act and it is the accused who commits it. In this case, indication is used to convince the judge.

The Criminal Procedure Code can justify the judge to make a thought based on events, actions, or circumstances encountered by the judge in the witness' statements, letters, or statements of the accused. Precisely, one can say that the judge can make a basis to view the fact as evidence. This is in accordance with article 113 HIR paragraph (3). That article emphasizes on applying instructions as evidence that the assessment of the strength of an evidentiary in any situation is left to the judge's consideration after the judge has conducted a thorough examination.

In the Draft Law of *KUHAP*, the indication is changed to become the judge's observation. This is written in article 175 paragraph (1) of the 2010 Draft Criminal Procedure

[17] N Ike Kusmiati, Fakultas Hukum, and Universitas Pasundan, "Kekuatan Pembuktian Surat Berita Acara," no. 01 (2001): 62–74.

[18] Natralia Prameswari, Samirah, and Yuliati Sri Wahyuningsih, "Kedudukan Alat Bukti Petunjuk Di Ranah Hukum Acara Pidana," *Jurnal Verstek* 3, no. 2 (2015): 1–10.

Code, which is as follows: "Valid evidence includes: a. Evidence; b. Letters; c. Electronic documents; d. Statements of the expert; e. Statements of the witness; f. The accused's statements; and g. Judge's observation."

Meanwhile, in Article 182 of the Draft Law of Criminal Procedure Code, it states the same sentences like in the Article 188 paragraph (1) and paragraph (3) of the Criminal Procedure Code and only omits the word 'indication'. This happens because there are many cases where the judges fail to prove the indictment of the prosecutor due to a lack of evidence. Meanwhile, the mandate of Article 10 of Law Number 48 Year 2009 concerning Judicial Power which is as follows: "The court is prohibited from refusing to examine, try and decide a case filed on the pretext that the law does not exist or is unclear but is obliged to examine and judge it"

The observation of evidence by the judges can provide flexibility for the judges in deciding every case submitted to them and they cannot create legal uncertainty with article 10 of Law Number 48 of 2009 concerning Judicial Powers.

Application of Circumstantial Evidence in Handling Criminal Cases

The definition of *indirect evidence* is " *That evidence which does not prove the fact in question, but proves another, the certainty of which may lead to the discovery of the truth of the one sought* [19], which means that "evidence that does not prove the fact in the question, but proves something else, something that can lead to the discovery of the truth sought. *Indirect evidence* also known as *circumstantial evidence* which is direct evidence of a fact from which a person can draw a conclusion regarding the presence or absence of evidence from another fact.

Circumstantial evidence is defined as a form of evidence that the judge may consider regarding facts that are not directly seen by eyewitnesses. Witness according to Article 1 number 26 of the Criminal Procedure Code: "a person who can provide information for the purposes of investigation, prosecution and justice regarding a criminal case that he himself heard, saw for himself and experienced for himself." In relation to article 1 point 26 of the Criminal Procedure Code, someone who hears about the incident can be said to be circumstantial *evidence.*

Indirect evidence or *circumstantial evidence* is evidence that does not directly prove the defendant's guilt so it requires other evidence so that a certainty can be drawn that it is indeed the defendant who has been proven guilty. The connection with these tools of evidence as *indirect evidence* or *circumstantial evidence* is the existence of one tool. Evidence alone is not enough to prove the defendant's guilt, so the defendant's guilt must be proven with at least two pieces of evidence that are consistent with each other so that it can convince the judge that it is true that the defendant is proven guilty as charged.

All of the evidence as intended in Article 184 paragraph (1) of the Criminal Procedure Code can be assessed as *indirect evidence* or in other words the author calls it *circumstantial*

[19] Farlex, "Indirect Evidence," 2023, http://legal-dictionary.thefreedictionary.com/indirect+evidence.

evidence, but the author does not confirm that only with *circumstantial evidence* it can be said that the defendant has been proven guilty. in accordance with what he was charged with, because we must not forget that the implementation and implementation of our Criminal Procedure Code must be based on the rule of law, so that every action in terms of law enforcement, the most important thing is that it must be based on legal provisions and laws, as well as places the interests of law and legislation above everything else. In this way, all levels of law enforcement officials are not permitted to act outside the law or act arbitrarily in order to enforce the law.

The existence of this *circumstantial evidence* does not necessarily immediately confirm the defendant's guilt, because first we must remember the provisions in Article 183 of the Criminal Procedure Code. So, from there, even if the judge is sure of the existence of *circumstantial evidence,* the judge still cannot impose a crime on the defendant before obtaining at least two valid pieces of evidence, as stated in a limited way in Article 184 paragraph (1) of the Criminal Procedure Code. Regarding this, we must not forget that the implementation and implementation of our Criminal Procedure Code must be based on *the rule of law,* so that every action in terms of law enforcement, the most important thing is that it must be based on legal provisions and laws, and prioritize the interests of law and legislation. -invitations above all.

Thus, there is a principle of *indirect evidence* or *circumstantial evidence* is not the same as Instructions because instructions must be obtained from the facts at trial in the form of witness statements, letters and statements from the defendant.

Considering that the Indonesian legal system is civil law, its main principles have binding power, because they are codified regulations in the form of laws and legal certainty is the goal. Circumstantial evidence does not provide legal certainty and is not recognized in the criminal procedural law system in Indonesia.

The application of indirect evidence used by the judge as a basis for imposing a crime in a court trial with Decision Number: 777/Pid.B/2016/PN.JKT.PST. Demonstrated and analyzed in detail based on legislation, the principle of legality, protection of human rights, the principle of *presumption of innocence,* doctrines and expert opinions.[20] The judge who decided the above case used his authority arbitrarily, exceeding the limits set by law. Because in the judge's consideration in the decision it was said that the public prosecutor and the judge could use *circumstantial evidence* in the event that there were no eyewitnesses who directly saw the murder being committed and this was contrary to Article 183 jo. 184 paragraph (1) KUHAP.

The basis of the judge's decision does not contain a fair legal certainty and has violated the defendant's rights, which are protected by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The decision also violates the defendant's rights as intended in Law of the Republic of Indonesia Number 39 of 1999 t regarding Human Rights (hereinafter referred to as "Human Rights Law"). The judge arbitrarily found the defendant

[20] Mardhatillah and Mahyani, "Bukti Tidak Langsung Sebagai Dasar Hakim Menjatuhkan Pidana."

guilty based on circumstantial evidence that is not known in the Indonesian criminal procedural law system.

The existence of *indirect evidence* or *circumstantial evidence* does not necessarily confirm the defendant's guilt, considering Article 183 of the Criminal Procedure Code. Even if the judge is convinced of the existence of *circumstantial evidence*, the judge may still not impose a crime on the defendant before obtaining at least two valid pieces of evidence, as stated in a limited manner in Article 184 paragraph (1) of the Criminal Procedure Code.

Statement was controversial because there were no witnesses at the trial who clearly stated that the defendant carried out a plan whose aim was to take the life of victim Mirna Salihin. To prove this planning, it should be revealed whether there was a previous dispute between Jessica and Mirna. Apart from that, a series of attempts by Jessica to kill Mirna were revealed, starting with how she obtained cyanide to pouring it into the glass of Vietnamese coffee served by Oliver's cafe. So far, said Romli, all these problems were not revealed in court so that the elements of premeditated murder according to Article 340 of the Criminal Code should not have been fulfilled.

Identify a legal rule We often encounter situations where legal rules are made which are beyond perfect, because in fact these legal rules are also made by humans who are far from perfect, therefore we often find that there are many shortcomings in legal rules, such as: legal vacuum, conflict between legal norms, and unclear norms or it could also be said that these norms are not clear. From there, the principles of conflict resolution which are aimed at dealing with conflicts between legal norms apply, namely, the first is the principle of "*lex superior derogate legi inferior*" or also commonly referred to as the principle of hierarchy, which is a principle which regulates that for higher legislation, overriding lower legislation [21].

Second, there is " *lex specialis derogate legi generali* " namely specific regulations trump general regulations, or in other words, if a conflict is found between general regulations and specific regulations, then the special regulations must take precedence. Then the third is " *lex posteriori derogat legi priori* " namely, the new regulations defeat the old regulations. In practice, we often find that legal regulations are left behind by the existence of a concrete event, which means that if there is an event, then the existing regulations are often inadequate, so that in cases like that, legal principles can be used as a basic basis. which is for solving a problem.

In this problem, between the provisions in the Criminal Procedure Code and what judges use in their legal considerations, the judge should know about the existence of the principle of conflict resolution, namely *the principle of lex superiori derogat legi inferiori* or also commonly referred to as the principle of hierarchy, which is a principle which regulates that for higher statutory regulations, it will override lower statutory regulations. The judge should consider the existence of circumstantial evidence or indirect evidence in the Criminal

[21] Meta Suriyani, *Pertentangan Asas Perundang-Undangan Dalam Pengaturan Larangan Mobilisasi Anak Pada Kampanye Pemilu*, 2021.

Procedure Code, because if we remember the principle of lex superiori derogat legi inferiori then what the judge uses as a basis for the decision is weak, and contrary to the rules that are clearly written in the Criminal Procedure Code.

Furthermore, the system of evidence in criminal procedural law: a) Positive legal proof system (*positief wettelijke bewijs theorie*) This proof makes oneself aware of evidence only, namely evidence that has been determined by law. A defendant can be declared guilty of committing a crime based only on valid evidence. Evidence established by law is important. The judge's confidence is completely ignored, in essence, if a person has fulfilled the legal methods of proof and evidence, namely those determined by law, then the defendant can be declared guilty and must be sentenced. The advantage of this positive theory is the ease and legal certainty in carrying out evidence using evidence that has been determined by law [22]. a) The proof system is based on the judge's belief alone (*conviction in time*) : This theory is in contrast to the theory of positive legal evidence previously mentioned. The basis of this theory is that evidence in the form of the defendant's own confession does not always prove the truth. Starting from this idea, the basis of this theory is the judge's conscience to determine that the defendant has been proven to have committed the act charged. This system allows proof without being based on evidence as referred to in law. The origin and basis of the judge in formulating or concluding his decision does not matter. Judges are allowed to ignore or draw conclusions from the available evidence [23]. b) An evidentiary system based on the judge's belief in logical reasons (*Laconviction Raisonee*): This evidentiary system is still based on the judge's beliefs, but the judge is still not bound by the tools that have been determined by law. Judges are permitted to use evidence other than that specified by law. The difference with an evidence system based on the judge's belief alone, the *Laconviction Raisonee system* requires the judge to decide whether the defendant is guilty or not based on logical and clear reasons that can be accepted by reason and common sense. c) The system of evidence according to law is negative (*negative wettelijke bewijs theorie*): Susanti Ante emphasized that the negative legal evidence system (negative *wettelijke bewijstheorie*) is a combination of the positive legal evidence system and the evidence system according to the judge's belief. The use of evidence still depends on the provisions regulated by law, but judges have the power to give their beliefs limited by clear reasons and must be accepted by common sense.[24] Accordingly, in the negative system there are 2 (two) things which are conditions for proving the defendant's guilt, namely (a) Wettelijk, the existence of valid evidence that has been determined by law, and (b) Negative, the judge's belief, namely based on From this evidence the judge believed the defendant was guilty. Evidence that has been determined by law cannot be supplemented with other evidence, and based on the evidence presented at trial as determined by law, it cannot force

[22] H. Firman Freaddy Busroh, "'Pembuktian Terbalik Dalam Tindak Pidana Korupsi.," *Jurnal Hukum Tora* 2, no. 2 (2016): 336–37.
[23] Safi, "Sistem Pembuktian Dalam Penanganan Perkara Perselisihan Hasil Pemilihan Umum Kepala Daerah Dan Wakil Kepala Daerah (Pemilukada) Di Mahkamah Kosntitusi," *Jurnal Dinamika Hukum,* 11, no. 3 (2011): 499.
[24] Susanti Ante, "Pembuktian Dan Putusan Pengadilan Dalam Acara Pidana."

a judge to declare the defendant guilty of committing the crime charged.

CONCLUSION

In accordance with the provisions set forth in Law Number 8 of 1981 concerning Criminal Procedure Law (Article 188), circumstantial evidence, or indirect evidence, constitutes a valid form of evidence in legal proceedings (what is referred to as an indication). In utilizing the indication as a form of evidence, a judge is tasked with discerning a correlation between an act, incident or situation that has transpired in order to reach a conclusion. This enables the judge to determine whether the criminal act committed by the accused is substantiated or not. In this case, it is imperative that the judge exercise caution when implementing the verdict through the lens of this directive evidence. In the Indonesian context, judges who employ this indirect method of evidence may rely on references that can be used to reconstruct directive evidence in a limited manner as specified in Article 188, paragraph (2), of the Criminal Procedure Code. This encompasses witness statements, letters, and the accused's own statements. It is therefore recommended that the judge should not seek to obtain such indications randomly from all sources. Should the existence of this indirect evidence be acknowledged, it would be prudent to include it in the Criminal Procedure Code or place it in a separate law, with a view to providing legal certainty for the accused and the wider community.

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