

Law Enforcement in The Investigation of Criminal Acts of Destruction of Evidence

Muh Malikul Mulki Nur^{a,*}, M. Syukri Akub^b, & Hijriah Adhyanti Mirzana^b

^aNotary Masters, Faculty of Law, Universitas Hasanuddin, Makassar 90245, Indonesia

^bFaculty of Law, Hasanuddin University, Makassar 90245, Indonesia

Abstract

This study aims to analyze law enforcement in the investigation of criminal acts of destruction of evidence in the jurisdiction of Kendari City, and analyze the role of evidence in court trials if the confiscated evidence cannot be shown because it has been destroyed due to demonstrations and legal efforts by police officers in Prevention of Destruction of Evidence Due to Demonstrations in Kendari City. This research is an empirical research type. The technique of collecting data is through field studies and literature studies, through interviews and collecting library materials relevant to this research. Furthermore, the data obtained were analyzed qualitatively and presented descriptively in accordance with the explanations that were closely related to this research, then drew a conclusion based on the analysis carried out. The results of the study indicate that law enforcement in the investigation of criminal acts of destruction of evidence is a form of accountability for the Kendari City Police, the law enforcement process is carried out by the police in accordance with their authority and the court.

Keywords: law enforcement, evidence, demonstran.

1. Introduction

Expressing opinions in public has become a common thing that will immediately happen, demonstrations are often carried out by students when there are odd and certainly contrary to the rules made by the government itself, even the right demo rules are not carefully considered. by the demonstrations, thus making the security police unit take measured actions to anticipate unwanted things, even the police unit did not hesitate to spray tear gas, build fortifications to sterilize demonstrators (UU Number 9 of 1998 concerning Freedom of Expressing Opinions in Public). The police also understand the rules for voicing opinions on freedom of association and assembly which are regulated in Law Number 9 of 1998 concerning Freedom to express opinions in public. This legal protection is the basis for conducting demonstrations.

Article 170 Paragraph (1) of the Criminal Code states that anyone who openly and collectively uses violence against people or goods, is threatened with imprisonment for a maximum of five years and six months, should be able to ensnare perpetrators of anarchism and become a benchmark for the masses so that they do not do especially with the state public facilities. In essence, demonstrations are a form of safe and controlled expression to voice things that are considered contrary to the rules made by the government itself, demonstrations are also a manifestation of the 4th Pancasila value whose practice points include deliberation in taking decisions. decisions for the common interest, students and even the community itself take demonstrations or demonstrations as the application of "democratic principles" in pluralistic community life, the expression of opinions in public is also a form of demonstration, demonstration according to article 1 point 3 of the Republic of Indonesia Law. Indonesia Number 9 of 1998 concerning the independence of expressing opinions in public is an activity carried out by a person or more to express thoughts verbally, in writing and so on in a public demonstration, hereinafter referred to in Article 5 paragraph (1) b of a person or group people who do demos have the right to get legal protection.

We can also see this series of anarchic demonstrations or demonstrations, this is not even the first time this has happened, it has become a habit for demonstrations to voice their opinions to be followed by criminal acts of

* Corresponding author.

E-mail address: mulkimalikul252@gmail.com

destruction, in the last two years alone there have been many demonstrations taking place in the city. Kendari was accompanied by destruction: for example, what was reported by the online media tempo, com.

In his upload, Thursday, September 17, 2020, it contained demonstrations or demonstrations accompanied by the destruction of public facilities, even this incident also injured the security personnel in the field, in the same year the online news Kompas.com contained news of demonstrations or demonstrations accompanied by the destruction of public facilities by the demonstrators. , and still ba Most of the demonstrations that took place were accompanied by this crime of destruction, of course this incident did not only happen in the city of Kendari, the big cities in Indonesia must have felt the same way, when there was a conflict or disagreement experienced by the Public. Moreover, in our country, it is a state of law where every crime committed will be followed by a legal process that investigates it, as is the case in Article 406 of the Criminal Code which states that anyone who intentionally and unlawfully destroys, damages, making it unusable or destroying something wholly or partly belonging to another person is punishable by a maximum imprisonment of five years and eight months and a fine, here the role of law enforcement is very much needed in investigating and investigating cases that occur.

2. Method

The research method used in this study is an empirical juridical research method. This research is legal research, so the method used is a legal research method that aims to find solutions to legal issues and problems that arise in them, so that the results to be achieved then are to provide provisions regarding what should be or issues raised. Peter M. Marzuki in his book Legal Research, states that legal research is a process to find the rule of law, legal principles, and law to answer the legal issues faced (Marzuki, 2014). Once a legal issue is determined, it is necessary to conduct a search to find legal materials that are relevant to the issue at hand (Marzuki, 2014). The primary legal materials and secondary legal materials that have been collected are then grouped and reviewed based on the approach used. In this study, a conceptual approach, a statutory approach, is used to obtain a systematic and comprehensive picture of the primary and secondary legal materials obtained to produce new legal prescriptions or arguments. Law Enforcement in Investigation of the Crime of Damage to Evidence.

3. Result and Discussions

3.1. Efforts on the role of evidence in a court trial if the confiscated evidence cannot be shown because it has been destroyed due to demonstrations

To and to strengthen valid evidence as referred to in Article 184 paragraph (1) of the Criminal Procedure Code, and to obtain the purpose of the judge's conviction on the indictment by the public prosecutor to the defendant. This is where the importance of the evidence lies, thus it is not the perpetrators or suspects of criminal acts that must be sought or found by investigators, but something of evidence must also be found, this is clear considering that the main function of criminal procedural law is none other than on reconstructing back from the incident of an offender whose actions were prohibited. While the supporting evidence for the business is evidence. The functions of evidence in court proceedings are as follows:

- a) Strengthening the position of legal evidence (article 184 paragraph (1) of the Criminal Procedure Code)
- b) Looking for and finding material truth or court cases that will be handled
- c) After the evidence is used as valid supporting evidence, the evidence can use the judge's conviction for the guilt charged by the public prosecutor.

The KUHAP does not explicitly state the definition of goods, but evidence can be said to have the same meaning as confiscated objects. In article 1 point 16 of the Criminal Procedure Code which reads as follows; confiscation is a series of actions by an investigator to take over or keep under his control movable or immovable objects as well as tangible objects and intangible objects for the purpose of a proof in investigation, prosecution and trial (Hamzah, 2006).

Based on the understanding (authentieke interpretatie) as formulated in article 1 point 16 of the Criminal Procedure Code, it is in several articles of the Criminal Procedure Code (article 8 paragraph (3) letter b; 40; 45 paragraph (2); 46 (2); 181 paragraph (1) ; 191 paragraph (1), letter I; 205 ARTICLE (2) is also called 'as evidence is to function (very useful) for the purposes of proof, investigation and prosecution and of course justice (Kuffal, 2007). There are several definitions of evidence given by experts as follows:

- a) Evidence is an object used to convince the defendant of the guilt of the criminal case that he is accused of (Tim Penyusun Pusat Bahasa, 2005).
- b) Evidence is the result of a series of investigators' actions in a confiscation and or search for examination of documents to take over and keep under their control movable or immovable objects and tangible or intangible objects for the purpose of proof in investigation and prosecution and trial (Sasangka & Rosita, 2003).
- c) Evidence is objects that are the target of acts that violate a criminal law.
- d) Evidence is an object or goods used to convince the judge of the guilt of the defendant's actions in the criminal case handed down to him.

We need to know that the evidentiary system is a stipulation on how to prove and of course it becomes the basis for drawing a conclusion about whether it is proven or not and what must be proven, before looking at the proof system adopted by the Indonesian Criminal Procedure Code, the following is an explanation of the system proof (Chahzawi, 2006).

Evidence based on the Judge's Confidence (Convection in time) in this evidentiary system, the assessment of the guilt or innocence of a defendant is only determined by the judge's belief alone, while the weakness of this system is that judges have enormous and unlimited freedom and freedom in making decisions. regardless of the defendant's guilt. Evidence Based on the judge's belief on logical reasons (laconvaction raisonnee) which this evidence system has identical principles with evidence based on the judge's belief which plays an important role in determining the defendant's guilt (Mulyadi, 2007).

In the Criminal Procedure Code there is no explicit explanation regarding the types of evidence but based on an authentic interpretation of Article 1 point 16 of the Criminal Procedure Code as described previously, evidence can also be referred to as confiscated objects, various types of confiscated objects or evidence. This is described in Article 39 paragraph (1) of the Criminal Procedure Code. Article 39 paragraph (1) of the Criminal Procedure Code states "that which can be subject to confiscation are:

- a) Objects or claims of a suspect or defendant which are wholly or partly suspected and obtained from a criminal act, or as a result of a criminal act.
- b) Objects that are used directly to commit a crime that they have prepared.
- c) Objects used to hinder the investigation of criminal acts.
- d) Special objects made or used to commit a crime

The position of the evidence, he concluded, is very important in carrying out a process of proving at trial, which occurs as a result if evidence is damaged or lost before being submitted as evidence at trial, the trial will be hampered and will become a legal vacuum because there is no evidence that can be presented, in this case. My thesis research on motorcycle evidence that has been destroyed and burned by demonstrations that commit criminal acts does not necessarily eliminate the essence of the evidence, because the physical carcass of the vehicle is still there, so in the process of proving at trial photo evidence can be presented in the verification process, said Andi Viyata S.H as the judge of the Southeast Sulawesi District Court in my interview.

Even though in principle all evidence is of equal value and importance, the fact is that law enforcement officers continue to work on proof efforts from the sequence of evidence, witness statements, letters and expert statements, even at the level of investigative examination, investigators will usually start taking steps to collect evidence. and witness statements, as well as in the stage of examination in court, the public prosecutor will start the effort of proof by submitting evidence of testimony, if the evidence of witness testimony is not sufficient, it will only bind to the examination of other evidence. Likewise with the evidence guide, if other evidence is not sufficient, prove the guilt of the defendant, with a good procedural law system mechanism, the role of evidence is very important in a trial process. The importance of managing confiscated objects from all levels of storage, article 44 of the Criminal Procedure Code stipulates that;

- a) confiscated objects are stored in the state confiscated object storage house
- b) The storage of confiscated objects is carried out in the best possible way and the responsibility of the superior is to the authorized official in accordance with the level of examination in the judicial process and the object is prohibited to be used by anyone.

In the case of confiscation of objects that can be easily damaged or dangerous, so that it is impossible to keep them until the court's decision on the case in question has permanent legal force. or if the cost of storing the object will become too high as far as possible with the approval of the suspect and his attorney, the following actions can be taken;

- a) if the case is still in the hands of the investigator or public prosecutor, the object can be sold and auctioned or he can be secured by the investigator or public prosecutor in the presence of the suspect and his attorney.
- b) The case is already in the hands of the court, then the object can be secured or sold at auction by the public prosecutor with the permission of the judge. The proceeds of the auction in the form of money are used as evidence, but for the purpose of proving the object as much as possible, part of it is set aside.

Speaking of evidence, the position of evidence in criminal justice in Indonesia can be explained:

- a) qualification of evidence; when it is related to the legal arrangements in article 184 paragraph (1) of the Criminal Procedure Code, evidence is not included in valid evidence, which can be used by a judge to obtain a conviction as a basis for making a decision, in the law. In the Criminal Procedure Code in force in Indonesia, there is no single article that regulates evidence, even though in the process of proving the defendant's guilt at trial, evidence is a very important thing while in practice, sometimes there are law enforcement officials who say that the existence of evidence. The person who is suspected of being the perpetrator of a crime is an indication that the crime is a crime, the evidence is the goods regarding which offense was committed (the object of the offense) and the goods with which the offense was committed are the tools used to commit the offense, for example a knife to stab people. Can also include evidence is the result of an offense,
- b) confiscated objects for the purposes of the judicial process and its regulation; confiscated goods which in the provisions of the criminal procedure are also referred to as confiscated goods as regulated in article 1 number 4 of PP No. 27 of 1983 concerning the implementation of the Criminal Procedure Code as stipulated in article 39 paragraph (1) of the Criminal Procedure Code Scope and goods These confiscations include:
 - (1) objects or claims of the suspect and the defendant which are wholly or partly suspected to have been obtained from a criminal act or part of the proceeds of a criminal act.
 - (2) objects that are used directly to commit a crime and to prepare it.
 - (3) objects used to hinder the investigation of criminal acts;
 - (4) objects that are specially made or used to commit a crime.
 - (5) other objects that have a direct relationship with a crime.

The basis for setting the Criminal Code is recognizing that goods that can be confiscated are from intentional crimes. The explanation of 39 of the Criminal Code also explains that confiscated goods under certain conditions are facultative (may be confiscated) and imperative (must be confiscated). There is also an emphasis on items that may be confiscated, for example a car purchased as a result of a crime, even though it is indirect, as described in the Supreme Court's decision No. 12 K/Kr 1960 on November 13, 1962 (Sordebrotto, 2003). In addition, HR 2 June 1933 also included mentions the same thing, namely goods purchased from the proceeds of crime (Sordebrotto, 2003). Likewise, legal entities in the form of firms or companies, even though they are not owned in their entirety HR (Sordebrotto, 2003).

The initial process of confiscation can only be carried out by investigators based on a permit from the chairman of the district court, this is regulated in article 38 paragraph (1) of the Criminal Procedure Code. Then in paragraph (2) it states in a very necessary and urgent situation how the investigator must act immediately and it is impossible to obtain a permit first, without prejudice to the provisions of paragraph (1) the investigator can confiscate only movable objects and it is obliged to immediately report to the the head of the local district court in order to obtain approval for the existence of provocation factors from the group considers the following matters:

In the event that the confiscated object consists of objects that can be damaged or are dangerous, so that it is impossible to keep them until the court's decision on the case concerned has permanent legal force or if the cost of storing the goods will become too high, as far as possible with the approval of the suspect or his attorney. the following actions can be taken;

- a) if the case is still in the hands of the investigator or public prosecutor, the object can be sold and auctioned or can be secured by the investigator or public prosecutor in the presence of the suspect and his proxies.
- b) If the case is already in the hands of the court, then the object can be secured or sold by the public prosecutor with the permission of the judge who hears the case and is witnessed by the defendant or his proxies;
- c) the result of the auction of the object concerned in the form of money is used as evidence;
- d) For the sake of proof, as much as possible, small parts and objects as referred to in paragraph (1) shall be kept aside.
- e) confiscated goods that are prohibited or prohibited from being circulated do not include the provisions as referred to in paragraph (1) are confiscated to be used for the interest of the state or destroyed;
- f) Return of confiscated items.

3.2. Legal Efforts by Police in Preventing Damage to Evidence Due to Demonstrations

a. Prevention

Efforts to prevent the destruction of evidence have also been maximally carried out by officers in the field, in the context of the very large number of demonstrations and the actions of the demonstrators who were accompanied by blind anarchy, overwhelmed the officers who were in the post who guarded the goods. This evidence, especially the minimal number of officers and the incompleteness of storage facilities and fortifications at that time, cannot be denied by the implementation of demonstration cases in Indonesia, especially regarding demonstrations that are often carried out by all groups, especially students on national holidays at various points in Indonesia. Public places to the front of government buildings often lead to anarchic actions, disobedience to the rules during demonstrations has forced the security police units in the field to always take decisive and measured actions, starting from the stage of spraying tear gas and preparing fortifications to the whistle of the air. Rubber bullets are often used to stabilize conditions in the field.

In the last three years, data related to demonstrations that went well and ended in anarchy adorned the data in the police, it is clear that this act of vandalism and destruction can be threatened with a criminal offense under Article 406 of the Criminal Procedure Code which deliberately and knowingly violates the law by destroying it, problems in the investigation process against I also admit that the demonstration is very difficult because there are many people, even thousands who have committed this crime," said Muh Arif as the head of the Kendari City Police Criminal Investigation Unit in my interview (Muh arief, *Kepala Kaurmintu Polres Kota Kendari*, maret.2022)

Article 406 KUHAP (book of criminal procedural law) (1) Any person who intentionally and unlawfully destroys, damages, renders unusable or loses something which wholly or partly belongs to another person, shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs. (KUHP 231,235,407,411.). In prevention efforts in securing confiscated evidence, the most important factor is the law enforcement factor, the number of porsonil on duty is increased in order to reduce the situation in the field and be responsive in securing the evidence, (because of the incident in the field the security factor is lacking so it is not able to secure the evidence that was found). There are many ways, Basically there are two ways to tackle crime, namely preventive action and repressive action

b. Preventive action

Preventive action is an effort to prevent someone from committing a crime or criminal act, this action includes preventing the meeting of intentions and opportunities for someone who wants to commit a crime, through this method it is hoped that as early as possible they can ward off things and prevent possible crimes.

Prevention of crime is an action that involves all elements in it, preventive efforts to tackle crime are not just the police, in a general sense, indirect crime prevention is also carried out without using criminal means or criminal law, for example religious education, socialization of the soul good, while the activities of the police that are preventive in nature, for example, patrols and strengthen human resources in the police.

c. Repressive Measures

Repressive actions are all actions taken by law enforcement officials after the occurrence of a crime as an act of eradicating crime or criminal acts, this repressive action is carried out through a court process that has been determined, namely:

- 1) Police investigation stage;
- 2) The prosecution stage by the public prosecutor;
- 3) The stage of examination before a court session by a judge;
- 4) the stage of implementing court decisions by prosecutors and institutions

Prison under supervision by the head of the court concerned The role of the police in preventing anarchic demonstrations is also carried out in three ways, this research also stems from the destruction by demonstrations which causes evidence that is in police confiscation to be burned, starting from demonstrations resulting in confiscated goods being burned, the role of the police in handling demonstrations is:

- 1) Starting from the licensing process for rallies, preventing anarchism in rallies has been carried out since the licensing process where the person in charge must clearly convey the intent and purpose of the demonstration.

- 2) Securing demonstrations Prevention of anarchic actions is carried out by giving appeals to demonstration participants who are in the location of the demonstration points to always comply with the various rules of the demonstration, respect the rights of local residents and express opinions in a safe and peaceful manner without violence and damage to facilities general.
- 3) Law Enforcement If the masses are out of control and under control, in the sense that they have carried out anarchic and violent actions, then the security forces on duty in the field are forced to take action to forcibly disperse the masses, namely by dividing the masses or dispelling the masses from the location of the demonstration point.

When we want to know the extent of the effectiveness of the law, the first thing to do is measure the extent to which the law is obeyed or not. In the Criminal Code for the crime of destroying objects (verneling of beschadiging van goederen), articles 406 to 412 regulate crimes that contain elements of destruction or behavior that has the nature of an object, for more details below Various criminal acts that can be qualified as criminal acts of destruction of goods will be described. Crimes in the form of destruction and vandalism are divided into 5 types, namely:

- 1) destruction or destruction in the main form
- 2) minor destruction or damage;
- 3) destruction or destruction of buildings, railways, telegraphs, telephones and electricity (something that is used for public purposes)
- 4) Destruction or destruction of buildings and shipping equipment

Destruction and destruction of objects in the main form is regulated in article 406 formulating as follows (Adami, 2003)

- 1) Whoever intentionally and unlawfully destroys, damages, renders unusable or eliminates an object which wholly or partly belongs to another person, is threatened with a maximum imprisonment of 2 years and 8 months or a maximum fine of Rp. 4,500.
- 2) The same punishment is imposed on a person who intentionally and unlawfully kills, destroys, renders it unusable and uses it or eliminates an animal wholly or partly belonging to another person,

In order to be punished, according to this article must be proven;

- 1) that the defendant has destroyed, damaged, made it unusable or lost something
- 2) that the destruction and so on were carried out intentionally and against the law
- 3) that the goods are wholly or partly the property of another person.

4. Conclusion

Based on the result and discussion, we conclude that:

- a) There must be strong regulations regarding evidence, especially in the era of development of rules that regulate evidence related to evidence, always experiencing modernization developments, such as evidence that when presented at trial has been destroyed or destroyed, police security forces are more alert in preventing the destruction of evidence because the role and quantity of confiscated goods is very important.
- b) It is necessary to increase the number of porsonil on duty in the field so that each one maintains a balance when something unexpected happens to prepare a proper storage place for evidence, in the case of vandalism in Kendari city, some of the confiscated evidence is outside the storage of evidence, because of the power of the storage space. those who have overcapacity are responsible for the destruction of confiscated goods, at the level of investigators in their storage, they have been given responsibility for maintaining the confiscated goods.

References

- Chazawi, A. (2003). *Crimes Against Property*. Malang: Bayu Media.
- Chazawi, A. (2006). *Hukum Pembuktian Tindak Pidana Korupsi*. Edisi Pertama. Bandung: Alumnus.
- Hamzah, A. (2006). *KUHP dan KUHP*. Cetakan 13. Jakarta: PT Rineka Cipta.

- Kuffal, HMA. (2007). *Penerapan KUHP dalam Praktek Hukum*, Cetakan 9. Malang: UMM Press.
- Marzuki, P. M. (2014). *Penelitian Hukum*. Edisi Revisi Cetakan ke-9. Jakarta: Kencana Pranada Media Group.
- Mulyadi, L. (2007). *Hukum Acara Pidana, Normatif, Teoritis, Praktik, dan Permasalahannya*. Edisi Pertama. Bandung: Alumni.
- Sasangka, H. & Rosita, L. (2003). *Hukum Pembuktian Dalam Perkara Pidana; Untuk Mahasiswa dan Praktisi*. Bandung: Penerbit Mandar Maju.
- Sordebrotto, R.S. (2003). *KUHP dan KUHP*. Jakarta: Rajawali Pers.
- Tim Penyusun Pusat Bahasa. (2005). *Kamus Besar Bahasa Indonesia*. Edisi 3. Jakarta: Balai Pustaka.