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RESEARCH ARTICLE

THE LEGAL CONSEQUENCES OF EXAMINATION PROCESS OF WITNESSES OR EXPERTS IN THE COURT ARE BROADCAST LIVE VIA ELECTRONIC MEDIA

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Abstract

The legal consequences of examination process of witnesses or experts in the Court are broadcast live via electronic media. The research method used in this study is normative legal research. The results of this study showed that the examination process of witnesses and experts at hearings broadcast live via electronic media deviates from the principles that have been in substance in Article 159 section (1), Article 160 section (1) letter A, article 167 section (3) Law No. 8 of 1981 in criminal matters, Article 87 section (1) of Law No. 5 of 1986 in state administrative matters, and Article 144 section (1) of HIR in civil matters. Such practice is legally binding, both the witnesses and experts who have not been examined have already know the material of witnesses and experts being examined, by watching the live broadcast of examination process of witnesses or the experts, so that witnesses and experts not examined at the time of examination process will provide evidence that are not objective, and even judges can be influenced by the views or opinions of the community in deciding the matter.

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Introduction:-

Background:

State of the Republic of Indonesia is a legal state, the consequence of establishing the country as a legal state is that the legal rules become the basis or guidelines for every action or act in the life of the state including in the examining process of witnesses and experts in court as part of the evidence in the process of proving ask for information before the judge decides a case, both criminal and civil cases as well as state administration as a form of law enforcement repressive.

Proof is the presentation of legal evidences according to law to the judge who examines a case in order to provide certainty about the truth of the events stated before the trial. Witness examination is the process of requesting information relating to a legal event which he heard himself, he saw for himself and he experienced himself regarding the case being examined in court. While expert examination is the process of requesting information from someone who has special expertise related to the case being examined.

In the context of examining witnesses and experts in the court the witnesses and experts are summoned one by one into the courtroom by the judge. **This is a principle in the process of examining witnesses and experts in court in order to avoid witnesses or experts** who will be interrogated temporarily with witnesses or other experts who have not been examined mutually knowing the examination material by the judge in the courtroom so there is no

provision of information made up or not objective to influence the judge to decide the case. For this reason, witnesses or other experts who have not been examined may not be in the same courtroom during the examination process.

But on a few case like Jessica KumalaWongso cases and BasukiTjahajaPurnama as known asAhok cases, at the time of the examination of witnesses or expert by the judge in court broadcast live via the electronic media, even television reporters often report the trial, interview the attorney, a witness or expert about the facts of the trial, even though the examination of all witnesses and experts has not been completed by the judge. Such conditions will certainly make witnesses and experts who have not been examined know the material that was asked during the examination process by watching broadcast of the examination program through the electronic media. Such practice attracts author to research and examine the legal consequences of the examining process of witnesses or experts in court which are broadcast live by electronic media.

Methodology:-

In accordance with the substance of the problem under study, this research method is normative legal research, by reviewing and analyzing positive legal provisions and legal concepts in order to respond legal issues related to witness and expert examination in court by a judge broadcasted live through electronic media.

Results and Discussion:-

Examination of Witnesses or Experts Broadcast Live By Media Electronic:

In principle, the examination of witnesses and experts by a judge in a court is to clarify the matter that is being interrogated in order to make the judge's confidence in deciding that case. Examination is intended to request information about legal events that he heard himself, he saw for himself and he experienced himself, as well as special expertise about the things needed for the case being examined.

In the context of examining witnesses and experts, the judge ordered the witnesses and experts to appear in court. Witnesses and experts are examined in a call into the courtroom one by one in the order that is considered as good as possible, this also applies to experts too. Such practice is to avoid witnesses and experts from witnesses and other experts know each other about the examination material, so there is no lie or conspiracy in providing incorrect information or made up by witnesses or experts who are one to another because of interests certain. Such practice is a principle in the process of examining witnesses and experts throughout the court both in criminal cases, civil cases and state administration. However, in the process of examining witnesses and experts by judges in court in cases such as Jessica KumalaWongso cases and BasukiTjahayaPurnamacases broadcasting is carried out directly by electronic media.

Broadcasting is an activity of broadcasting broadcasts by means of broadcasting and/or transmission facilities using radiofrequency spectrum over the air, cable and/or other media to be received simultaneously by the public with the broadcast receiver. Direct broadcasting through electronic media as an activity to disseminate messages or series of messages in the form of sounds, images, or sounds and images that are interactive or not, through means of electronic media broadcasting in the form of television or other electronic media to be heard and viewed simultaneously or together by the public with broadcast receiver. The distribution of broadcasts is intended to give birth to information or ideas in the form of sound and pictures in general.

Direct broadcasting through electronic media theexamining process of witnesses and experts in court by the judges certainly displays concurrent sounds and pictures in the courtroom about the atmosphere of witnesses and expert examination to be heard and viewed by many people. Direct broadcasting of examination process effected in all people in various parts of the world being able to follow the proceedings of the trial without coming to court including witnesses or experts who have not been examined. Broadcast referred to is a development in the world of science and information technology. However, developments must not rule out principles that have become values in the world of court related to the examination of witnesses and experts.

Direct broadcasting of the witness and expert examination process by judges in court through electronic media certainly result in witnesses and experts who have not been examined will find out the examination material by watching the examination process through electronic media channels so that they can change their statement when their turn is examined in court.

Many people feel that the examining process of witnesses and experts in court which is broadcast live provides information to the public about the process of law enforcement in court so that the community can control the court institution in examining cases that have been deemed not transparent and there is fraudulent in the court environment, on the grounds that one of the principles adhered to in procedural law in Indonesia is open to the public.

But according to the author, the meaning of the principle open to the public in procedural law does not have to be interpreted by broadcasting live through electronic media throughout the trial process in court, there is an over-interpretation of the application of the principle of a trial open to the public. The trial is open to the public must be interpreted that the trial is open to everyone and everyone is allowed to be present directly in the courtroom to witness the trial process (except for witnesses or experts on the witness or expert examination agenda)

If the reason for broadcasting directly through electronic media about the entire trial process is to facilitate the public accessing information about the judicial process then not the whole trial agenda especially witnesses and expert examinations must be aired directly for public consumption, moreover the number of witnesses and experts examined is more than one and not one day inspection.

The examining process of witnesses and experts broadcasted live through electronic media in the Jessica KumalaWongso cases and BasukiTjahayaPurnama cases was based on the Supreme Court Circular Letter Number 04 of 2012 concerning Recording of the Trial Process (hereinafter abbreviated to SCCL). The SCCL in full contains that:

To ensure that the trial is more transparent, accountable, and orderly, in addition to the record of the substitute registrar stated in the minutes of the trial which has so far been regulated in article 202 section (1) of the Criminal Procedure Code, audio recording visual systematically is needed in the future, orderly and inseparable from the permanent procedure of the trial. For this need, the trial in the first level must be accompanied by an audio-visual recording, with the following provisions:

1. The results of the audio-visual recording are a complement of the Minutes of the Trial;
2. Audio visual recording is carried out systematically and guaranteed its integrity;
3. The audio-visual recording of the trial is managed by the Registrar; and
4. The results of audio-visual recordings as part of bundle A.

To ensure compliance with the above provisions, the priority of the implementation of audio-visual recordings at the court will be as follows:

1. For the initial stage is carried out in cases of Corruption and other cases which attract public attention;
2. The Chairman of the Court must ensure the implementation of audio-Visual recording accordance with this circular letter;
3. The Directorate General of the General Judicial Body is responsible for:
 1. financing;
 2. technical standardization;
 3. coaching;
 4. fulfillment of infrastructure needs;
 5. periodic evaluation; and
 6. annual report to the leadership of the Supreme Court.

Thus taking into the availability of resources, the procedure as stipulated in this circular letter is expected to have been carried out no later than December 1, 2012.

Based on the contents of the SCCL as mentioned does not indicate that any arrangements relating to the trial must be broadcast live through the electronic media, but the SCCL is as a guide technical Supreme Court in the context of conducting oversight of the performance of all judges in the first instance in deciding cases. The said supervision is carried out through evaluation of video recording of the trial. So the video recording of the trial is only for the internal benefit of the court and the Supreme Court is not for public consumption. This was also said by the chairman of the Judicial Supervision and Investigation Board of the Judicial Commission and the Supreme Court Supervisory Agency, Eman Suparman, that one of the Supreme Court's supervisory methods of Judges was to install a camera monitoring device that would record the trials conducted by the judges

Even according to the authors, the SCCL is not a type of statutory regulation, which can be used as a legal basis for broadcasting directly in court proceedings, but rather SCCL is a policy rule that is a technical guide rather than an arrangement or regulation, so SCCL cannot be constituted as a legal basis for broadcasting live hearings in court. According to the author, there is no reason for broadcasting directly to the examination process of witnesses and experts with the aim of making it easier for citizens to access information about the case that is being interrogated by judges in court as a form of supervision or control over a court institution, because there are institutions that are given the authority to conduct both internal and external oversight of the court in carrying out their duties and functions.

The existence of an independent judiciary is to hold justice in order to uphold law and justice without having to be intervened by anyone, let alone public opinion in society. In the United Kingdom and the United States being well aware of the importance of the judiciary, a lawyer will urge that the client he does not speak too much to the media or expose the case he is handling. This was also done by prosecutors, because they were well aware that what would be said and proposed would be considered in a court hearing and not outside the court hearing. Even the atmosphere of the trial that was aired on television was not the result of live coverage, but a recording after the case had been decided by the judge. The screening of the trial video can be carried out if the case had been decided not while the case is meant while being examined in court.

Awareness to respect the trial process is already high enough shown by the United Kingdom and the United States, so that the course of a trial cannot be covered by the media to maintain the authority of the judiciary. Such awareness must also be practiced in the world of justice in Indonesia without having to broadcast directly the examination process of witnesses and experts. Thus broadcasting directly through electronic media throughout the examining process of witnesses and experts at the trial certainly deviates from the principle of examining witnesses and experts.

According to the author, even though the state in a state of disaster such as epidemic that is the corona virus which temporarily occurs covers the entire territory of the country so that it cannot be carried out a direct inspection process by the judge to witnesses or experts in the courtroom, as well as the presence of witnesses and experts outside the region or territory Indonesia therefore does not allow a direct examination process so it can be carried out directly in a separate place by using electronic media but only broadcast specifically for witnessing by certain people who have direct interest in the case such as judges, prosecutors, or lawyer, not broadcast to the public related to the intended inspection process. Therefore, it is not unreasonable to conduct witnesses or expert examinations broadcast live.

Legal Consequences of Examination of Witnesses or Experts Broadcast Live By Electronic Media:

The examining process of witnesses and experts in a trial that is broadcast live by electronic media deviates from the principle that has become a value in the substance of the regulation Article 159 section (1), Article 160 section (1) letter A, article 167 section (3) of Law no. 8 of 1981 in criminal matters, as well as Article 87 section (1) of Law no. 5 of 1986 in state administration matters, and the provisions of Article 144 section (1) HIR in civil matters.

Article 159 section (1) of Law N. 8 of 1981 stipulates that the presiding judge of the next session examines whether all the witnesses summoned have attended and gave orders to prevent witnesses from contacting one another before giving statements at the hearing. Next Article 160 section (1) letter A of Law no. 8 of 1981 stipulates that witnesses are summoned into the courtroom one by one in the order deemed by the presiding judge to be as well as possible after hearing the opinion of the public prosecutor, defendant or legal advisor. Likewise Article 167 section (3) of Law No. 8 of 1981 stipulates that witnesses during the trial are prohibited from conversing with each other.

Provisions governing the examination of witnesses also apply to expert examinations, as stipulated in the provisions of Article 179 section (2) of Law no. 8 of 1981 which stipulates that all the provisions mentioned above for witnesses also apply to those who provide expert testimony, provided that they take an oath or promise to provide the best and actual information according to knowledge in their field of expertise.

In state administration matters it is regulated in Article 86 section (1) of Law no. 5 of 1986 as lastly amended by Law No. 51 of 2009 concerning State Administrative Court, which stipulates that at the request of one of the parties, or because of his position, The presiding Judge of the Hearing may order a witness to be heard at a hearing. Furthermore Article 87 section (1) of Law No. 5 of 1986 which stipulates that witnesses are called to court

individually. In civil matters it is regulated in Article 144 section (1) HIR that witnesses who come on the appointed day are called in the courtroom one by one.

The principle of examining witnesses in criminal matters the same as civil matters and state administration matters and the process referred to applies also to expert examination, in principle witnesses and experts are not permitted to listen to each other in the examination process by judges in court. Of the various provisions concerning procedural law both criminal, civil and statutory procedural law does not regulate the legal consequences for the act of broadcasting directly the examination process of witnesses and experts in court.

However, in accordance with the principle of examining witnesses and experts who are subject to the provisions of the provisions as mentioned above is to avoid witnesses or experts who have not been examined know the examination methods of witnesses or experts who have been examined. In nature, there is a prohibition for witnesses during the trial to know each other about the substance of the examination, so that in the provisions of Article 167 section (3) of Law No. 8 of 1981 stipulates that witnesses during a hearing are prohibited from conversing with each other. This prohibition applies also to experts as based on Article 179 section (2) of Law no. 8 of 1981 as already mentioned.

The purpose of the prohibition is not only to create a calm atmosphere in the courtroom, but also to avoid any mutual knowledge of the examination material between witnesses and experts who have been examined by those who have not been examined. Therefore, when the witnesses and experts who have been examined by the judge must remain in the courtroom, unless the presiding judge considers it necessary to hear witnesses and other experts outside the presence of witnesses and experts who have been heard. However, if the witness or other expert being examined is reluctant to give evidence in the presence of witnesses and experts who have been heard in the room, the judge may order it out of the courtroom for the witness or expert who has been examined, as it is possible that the witness or expert will be examined to be independent, awkward, or fearful of giving evidence when heard by witnesses or other experts.

According to the author, the examination of witnesses and experts broadcasted directly can also result in legal on contamination of the evidence, because witnesses and experts who have not been examined may be affected by what the witnesses and experts have previously examined so that they try to provide information that is not objective. In fact, it can even be feared that the judge will be affected by external views commenting on the trial process so that the judge ignores the facts revealed at the hearing, and the judge can be affected by public opinion. Even the public seems invited to participate as a judge in giving consideration to decide the case in question, as well as trying to herd opinions before the judge decided the case in question. Likewise, the community can sentence the judge to have played with one of the parties if the judge's decision is not the same or not in line with the assessment of the community.

Whereas judges in the process of making decisions on a case really need careful consideration and thought according to the evidence and belief of the judge in order to settle the case by basing thoughts on a sense of justice and legal certainty that is not known by the public or who is not a profession as a judge so it is not surprising if what what is in the minds of the public can be different from the verdict of the judge, so that the examination process of witnesses and experts broadcast live through electronic media creates a legal uncertainty, because only matters of public concern are broadcasted directly by the electronic media, whereas cases others don't.

Conclusion:-

Based on the discussion as outlined it can be concluded that the examination process of witnesses or experts in the proceedings broadcast live by the electronic media is contrary to the principles contained in the substance of Article 159 section (1), Article 160 section (1) letter A, Article 167 section (3) Law No. 8 of 1981 in criminal matters, Article 87 section (1) of Law No. 5 of 1986 in state administration matters, and Article 144 paragraph (1) of HIR in civil matters. Such practice involves both the witness and the expert knowing the examination material of the witness and the expert being examined, by watching the live broadcast of the examination process of the witness or the expert, so that the witness and expert have not been examined during the examination process will provide non-objective evidence. Such thing has an impact to the contamination of the evidence, and even the judge may be influenced by external opinions to ignore the facts presented at the trial, even the public as a judge in giving judgment to decide the matter, and trying to herd opinions before the judge decided the matter. Whereas the judge in process of making a decision on a matter Whereas the judge in the process of making a decision on a case really

needs careful consideration and thought according to the evidence and belief of the judge in order to settle the case by basing his thoughts on a sense of justice and legal certainty unknown to the public. For this reason, the court should not give permission to broadcast directly the trial process in the witness and expert examination agenda.

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