

Medicolegal Aspects and Examination Techniques in Exhumation Cases with Alleged Human Rights Violation



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Abstract

Forensic doctors play a role in handling cases associated with the violations of human rights. When a forensic doctor is asked by the National Commission of Human Rights (Komnas HAM) to exhume human remains in the cases stated above, the first thing that must be done is to discuss the Medicolegal aspects with the National Commission of Human Rights team, before preparing the resources needed, and explaining the process of exhumation.

Keywords: identification; Exhumation; Medicolegal Aspect; Human Rights.

Introduction

If forensic doctors asked to exhume, the first thing that must be done is to discuss the Medicolegal aspects with the National Commission of Human Rights team, before preparing the resources needed, and explaining the process of exhumation. This paper will elaborate about medicolegal aspects and the exhumation of ten bodies found, who allegedly violations died due to human rights.

Discussion

A forensic doctor explains to the National Commission of Human Rights Team, that the exhumation of the bodies can only be done if there is a warrant from the case investigator. Because this case is an alleged human rights violation case, then according to the Indonesian Law Number 26 of year 2000 (Undang-undang No.26 tahun 2000) on Human Rights Court, states that the case investigator (penyidik) is the attorney general whereas the early investigator (penyidik) is someone from the National Commission of Human Rights. Coordination with the police department and local government (funeral service) is needed to obtain security assistance and the provision of the labor of gravediggers. Before starting the exhumation process, the case investigators with the help of the doctor must explain to the victim's family about the intent and purpose of grave excavation. The examination process of this case is estimated to take more than three days and requires about five forensic doctors [1-3].

The number of Human Resources (HR) needed is related to the length of on-site workmanship, the more human resources there are, and then the shorter processing time expected. Examination can be done in an autopsy room or onsite to facilitate the re-burial process as well as consider the problems related with transportation of the bodies and time. However, it is recommended to do the examination in an autopsy room because it can be done quietly and without having to be watched by the public. If the examination is done at the onsite of the excavation, then a request for assistance from the local police is needed to address security issues. During the rainy season, it is not recommended to do an examination in the tent onsite the burial.

The Legal Basis In This Case

Indonesian Law Number 26 of year 2000 (Undang-Undang Republik Indonesia No.26 tahun 2000) on Human Rights Court Upon cases with alleged serious human rights violations, it is required to take special measures in early investigation (penyelidikan), case investigation (penyidikan), prosecution and examination process. The special measures in handling serious human rights violations are:

It is necessary to form an ad hoc team during early investigation, case investigation, prosecution, and judges.

- a. it is necessary to affirm that the early investigation is only conducted by the National Commission of Human Rights, while the case investigator is not authorized to receive reports or complaints as regulated in the Criminal Procedure Code (Kitab Undang-undang Hukum Acara Pidana)
- b. a provision of a certain period of time for investigation, prosecution and trial in court shall be required
- c. necessary provisions on the frequency of victims and witnesses
- d. a provision that confirms that there is no expiration for serious human rights violations

Article 4: The Human Rights Court has the duty and authority to examine and decide cases in serious violations of human rights.

Article 8: The crime of genocide as referred to in Article 7 paragraph a is any act committed with the intent to destroy or annihilate all or any part of a nation, race, ethnic group, religious group, by:

- a. killing group members;
- b. causing severe physical and mental distress to group members;
- c. create a living condition of the group that will result in physical destruction either in whole or in part;
- d. impose measures aimed at preventing births within the group; or forcibly transferring children from certain groups to other groups

Article 18

- a. Early investigation of serious human rights violations committed by the National Commission of Human Rights;
- b. The National Commission of Human Rights in conducting the investigations referred to in paragraph (1) may establish an ad hoc team comprising of National Commission of Human Rights and the community.

Article 19

(1) In conducting the early investigation referred to in Article 18, the investigator is authorized to:

- a. to conduct investigations and examinations of events that arise in a society based on the nature or scope of which is suspected to be a serious violation of human rights
- b. receive reports or complaints from a person or group of people about the occurrence of serious violations of human rights, also seek information and evidence
- c. calling upon the parties who made the complaint, the victim, or the parties who receive the complaint to be requested and heard for their statement;

- d. calling upon witnesses to be asked and heard for their testimony
- e. review and gather information on the scene and other places necessary;
- f. calling upon the parties associated to provide written information or to submit the necessary documents in accordance with the original documents needed;
- g. on the orders of the case investigator may take the following actions:
 - I. checking documents;
 - II. search and foreclosure;
 - III. search inspections of houses and yards
 - IV. buildings, and other places occupied or owned by certain parties
 - V. call upon experts related with the investigation.
- h. In case the early investigator starts investigating an event that is suspected to be a serious human rights violation, they must inform the case investigator.

Criminal Procedure Law Article 133

- a. In the case where a case investigator for the interest of the judiciary, in handling a victim of injury, toxicity or death suspected due to a criminal offense, he/she is authorized to file a request for expert information to a judicial medical expert (forensic doctor) or physician or other expert.
- b. Requests for expert information as referred to in paragraph (1) shall be made in writing, which in the letter is expressly stated for examination of wounds or post-mortem examination and/or autopsy.

Criminal Procedure Law Article 135

In the case where a case investigator, for the interest of the judiciary is required to perform the exhumation, it is carried out according to the provisions referred to in Article 133 paragraph (2) and Article 134 paragraph (1) of this law.

Criminal Procedure Law Article 136

All costs incurred for inspection purposes as referred to in the Second Section of Chapter XIV shall be borne by the state. Criminal Procedure Law Article 135 and 136, the reason the case investigator orders an exhumation, are:

- a. In the case of illegal burial of corpses to conceal a person's death or for criminal reasons
- b. In cases where the cause of death listed in the death certificate is unclear and raises the question
- c. In cases where the identity of a buried corpse needs to be verified or otherwise The resources required for an

exhumation include human resources and equipment. The human resources needed to attend during this case, are:

- a. Police and security
- b. Team of doctors (forensic doctor/co-assistant doctors to help take notes/forensic technicians)
- c. Family / heirs if any
- d. Grave digger
- e. Representatives from the National Commission of Human Rights
- f. Local government / community leaders
- g. In this case, it also needed two anthropologists and two odontologists. Anthropologists usually examines the corpse on the excavation site.

Before starting the digging and examination of the corpse, the grave or site of the burial must be identified by:

- a. Funeral service personnel
- b. Grave diggers who buried the corpse, or the officer who made the grave (in the case of mass burials, the officer may indicate the location of the cemetery but it is not necessarily true) The equipment needed for the exhumation can be stored in a special tool box, in this case it required about 10 boxes containing the following:
 - a. Gloves
 - b. Personal Safety Equipment (boots, plastic apron, hand gloves, mask, hat)
 - c. Plastic pots for histopathology examinations
 - d. Formalin Solution
 - e. Autopsy Set Equipment:
 - I. Brush to clean dirt/soil around the bones
 - II. Chirurgical forceps
 - III. Anatomical forceps
 - IV. Knife
 - V. Heart knife
 - VI. Brain knife
 - VII. Scalpel and blade
 - VIII. Scissors
 - IX. Hak
 - X. Saw
 - XI. Sonde
- f. Label

g. Measuring tools and ABFO label

h. Antiseptic liquid to wash hands

i. Paper/documents and stationary

j. Plastic Bags

k. Camera

l. Body/corpse bag

In examination death cases related to human rights violations, a complete documentation (written report, audio and visual documentation) is needed required.

a. Identification of graves to be excavated is recorded in a form "grave/cemetery map". The grave size, grave direction (north, south, east and west), findings at depths of 5, 10, 15, and 20 meters are noted. If there is any indication or suspicion of death from heavy metal poisoning then sampling of soil from the grave surface and from the four sides of the corpse should be taken for laboratory examination.

b. Filling a tomb dismantling report

c. If a coffin is found, then it must be cleaned and identified. If It should also be noted if the corpse is using a shroud. Photographs and documentation must be done before lifting it from the grave.

d. Postmortem examination of the corpse includes external examination and autopsy.

In examination of skeleton zed corpses, identification attempts to determine if the skeleton is human or not. If it is a human remain, then race, gender, age, height, special features, deformities, signs of trauma must be determined. If there is a suspicion that the corpse is a person in particular, then the data collected can be compared with antemortem data and examination by anthropologist and odontologist. Sampling is also needed to a DNA test. In the case of an examination where the corpse is still intact with the soft tissues then external examination that should be done, which consists of documenting:

a. Cover or shroud of the corpse

b. Clothing

c. Jewelry

d. Objects beside the corpse

e. Postmortem signs (livor mortis, rigor mortis, signs of decomposition

f. Common identification: age, sex, height, weight, race, age, skin color; height and weight, circumsized or not

g. Special identification: tattoos, moles, congenital abnormalities, scarring, skin disorders

h. Local examination: head, hair, eyes, ears, mouth (teeth), neck, chest, abdomen, extremities, genitals, back and rectum.

- i. Examinations for wounds and broken bones
- j. Photograph documentation

Internal Examination/Autopsy:

- a. Opening of soft tissues and muscle
- b. Opening of body cavity, which can be done with two incision methods (Y or I)
- c. Extraction of organs, which can be done using letulle/ghon/virchow/rokitansky technique
- d. Notes and documentation on findings and take samples for histopathology examination
- e. Examination for signs of trauma on bones
- f. Take samples for DNA examination or other laboratory examination
- g. Photograph documentation
- h. Odontology and anthropology examination if needed

When poisoning is suspected to be the cause of death, generally there is no difficulties in the examination, samples of body tissue from the corpse/victim should be taken and examined in laboratories. If the corpse has been damaged or severely decomposed then samples from any remaining organs must be taken for laboratory examination. If the internal organs are not found at all, then the examination is done from hair, teeth, nails, bones samples [4-7].

Conclusion

Before we do examination body with alleged human rights violation, we must know about Medicolegal aspects and prepare the expert, equipment and documentation. If the internal organs are not found at all, we can take the sample from hair, teeth, nails or bone sample.

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