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Implementation of borrow-used evidence criminal case in Makassar City

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ABSTRACT

This research examined the legal framework for borrowing and exploiting evidence in criminal trials in Makassar City and the legal protections for evidence owners. Research is empirical normative legal. The investigation found that (1) the lending and use of evidence is governed by unique norms at each level of examination, not by law. (2) The form of legal protection for the owner of evidence in borrowing and using evidence is preventive legal protection, law enforcement does not immediately give permission because it is feared that it will disappear or change form, granting permission by looking at whether the loan is appropriate or not based on the level of urgency, and fulfilling the formal requirements which refers to Article 44 paragraph (2) of Law 8/1981 concerning the Criminal Procedure Code jo. Article 30 PP 27/1983 concerning the Implementation of the Criminal Procedure Code, as well as material requirements referring to the rules for each level of examination, and repressive legal protection, Article 46 of the Criminal Procedure Code, to minimize disputes in Article 221 paragraph (1) number (2) and Article 233 Law 1/1946 concerning Criminal Law Regulations, Article 10 paragraph (2) letter (h) Perpol 7/2022 concerning the Professional Code of Ethics and the Police Code of Ethics Commission, Article 7 paragraph (1) letter (f) and (h) Perja-RI No.PER- 014/A/JA/11/2012 Concerning the Prosecutor's Code of Conduct and to avoid disputes most of the evidence is returned after an inkracht decision from the Court. The implication of this research is to be able to analyze the legal framework and policies governing the use of loan-to-use evidence in the criminal justice system in Makassar. In this regard, it is important to understand whether the existing legal and policy framework is sufficiently clear and consistent to facilitate the effective use of proof of use, and whether there is a need to update or improve existing regulations.

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1. INTRODUCTION

For the sake of brevity, we will refer to the 1945 Constitution of the Republic of Indonesia (hereafter referred to as the 1945 Constitution of the Republic of Indonesia) as stating that the Republic of Indonesia is a Rechsstaat rather than a Machtstaat. (Marpaung, 2011). This means that the Republic of Indonesia is a constitutional democracy that respects human rights and ensures that all

people are treated equally under the law, as enshrined in Pancasila and the Constitution of the Republic of Indonesia from 1945. Law, both written and unwritten, must serve as the basis for all of the Indonesian people's conduct. In order for any issues that may emerge to be dealt in accordance with the law. Justice so. To paraphrase Achmad Ali: a system of rules or measures that establishes the bounds within which people may and may not act in public (Alesia Lestari Panjaitan & Perdana, 2019). An equilibrium exists in social life, and the law exists to promote an orderly, safe, peaceful social order (Arifin et al., 2021). If society exclusively prioritizes the protection and empowerment of individuals without considering the collective good, then everyone in it suffers (Rahardjo, 2006). The goal of every legislation should be to maximize the number of people who benefit from it.

In order to fulfill its duty to maintain the law, the state, as defined by Van Hammel's definition of criminal law, prohibits any actions that run against to the law (onrecht) and punishes those who do so with pain (suffering) (Maskur et al., 2022). While the Criminal Code (hence referred to as the "Criminal Code") codifies Indonesia's formal criminal law, Law Number 1 of 1946 concerning Criminal Law Regulations and other specific criminal laws not included in the Criminal Code lay out the country's material criminal law. The Criminal Procedure Code Law of 1981 (Law No. 8) (Effendi, 2014).

The purpose of law enforcement is to maintain social stability by either preventing or punishing illegal behavior once it has occurred (Munib, 2018). By applying the provisions of criminal procedure law that are honestly and appropriately regulated, the Criminal Procedure Code (hereinafter abbreviated as the Criminal Procedure Code) seeks material truth, the complete truth of a criminal case (Harahap, 2002). Even if many individuals believe they do not have legal certainty after going through the trial process in court, law enforcement must be founded on the genuine philosophy and purpose of law in order to achieve legal certainty for everyone.

Justice for criminals (Criminal Justice) encompasses all stages of the decision-making process that an individual faces (Herlianto, 2014). Focusing on the "searching for and collecting evidence so that the crime found can become a light, and in order to find and determine the perpetrators," criminal procedural law's investigative actions are central to the process of "looking for and finding an event" that is considered or suspected to be criminal (Fauzi & Dona, 2022).
The court uses an examination method known as evidence to prove the activities accused against a defendant and to gather substantial truth that will persuade the judge to believe that the defendant is actually guilty. The existence of physical evidence is also crucial for proving guilt. The term "evidence" is often used to refer to such items (Afiah, 1989).

Indonesia uses the negative wetelijk approach for case registration, which mandates the presentation of at least two pieces of corroborated evidence and the judge's conviction in order to reach a verdict. Prosecution in this context does not entail finding fault with a suspect, but rather seeking to show what really occurred, or the material reality of a case, in addition to the presence of evidence and other evidence to support the trial process in court.
Since the evidence pertains to a felony, it is crucial for proving guilt. In a criminal trial, the phrase "evidence" refers to the things that were the subject of the crime (the "object of the offense") and the commodities that were used to perpetrate the crime (the "instruments of the offense"). A knife may be used to attack someone as an illustration. The end outcome of the crime also counts as proof. If, for instance, a private home was purchased with stolen public funds (corruption), the home itself would be proof of or the outcome of a crime (Utoyo et al., 2021).

In many cases, confiscation of such evidence occurs due to concerns that it would be destroyed, lost, misplaced, or otherwise disposed of. The requirements for confiscation are set out in Article 38 of the Criminal Procedure Code, which reads as follows because confiscation is an action concerning the problem of other people's property rights, which is part of human right "(1) Confiscation can only be carried out by investigators with a permit from the head of the local district court, (2) In very necessary and urgent circumstances when an Investigator must act immediately and it is not possible to obtain a permit in advance, without prejudice to the provisions of paragraph (1), the Investigator may confiscate only movable objects and for this he is obliged to immediately report to the Head of the local District Court to get approval".

The judge's confidence in rendering a verdict is bolstered when evidence that will be used at trial is kept secret until that point. When a victim's motor vehicle is confiscated as evidence, it hurts both them and their credibility as a witness because the victim needs the car to get around and because the car needs regular maintenance to keep its value.Gunawan (2019)., first file a request to borrow and use evidence, paying close regard to the specific guidelines outlined in Law no. 8 of 1981 governing the Criminal Procedure Code.

There is no legal justification for the practice of borrowing and utilizing evidence, and it is specifically forbidden to do so with seized items (evidence), as stated in Article 44 paragraph (2) of the Criminal Procedure Code. "The safekeeping of confiscated objects is carried out as well as possible and the responsibility for it lies with the authorized official according to the level of examination in the judicial process and these objects are prohibited from being used by anyone." Evidence that has been seized may be borrowed and used in court proceedings if approved by the officer in charge of each successive examination. In order to establish limits within which people's daily lives can fall in line with what's been regulated by law, we need to consider not only the certainty of the law but also the benefits to society and the fairness of the system, all of which must operate in unison. so that the goals of law and order and fairness may be accomplished.

In light of this background, the author poses the issue of implementing the borrowing and use of evidence in criminal cases in Makassar City as the subject of this study.

It's possible that previous research has examined related issues, such as the use of borrowed evidence or evidence-sharing practices in criminal investigations. However, the specific context of Makassar City may require a more localized study to understand the unique challenges, practices, and legal framework in that particular jurisdiction.

The difference between previous research and the current work would depend on the specific focus, methodology, and objectives of the research being conducted. Some potential differences could include: a) Geographical Context: Previous research may have focused on other regions or countries, while the current work specifically examines the implementation of borrow-used evidence in criminal cases in Makassar City. This localized approach allows for a deeper understanding of the specific challenges and dynamics within that jurisdiction, b) Legal Framework: Previous research may have explored general legal frameworks or guidelines regarding evidence-sharing practices, while the current work can analyze the specific legal framework and policies governing the use of borrowed evidence in Makassar City. This analysis can provide insight into any unique regulations or practices that influence the implementation of borrowed evidence in criminal cases, c) Case Studies: The current research can incorporate case studies or examples from Makassar City to illustrate the practical application and outcomes of using borrowed evidence in criminal investigations. By examining real cases within the jurisdiction, researchers can provide context-specific insights into the effectiveness, challenges, and implications of this practice, d) Stakeholder Perspectives: The current research can involve interviews, surveys, or other data collection methods to gather the perspectives of various stakeholders involved in criminal investigations in Makassar City. This primary research can provide a localized understanding of the experiences, opinions, and concerns of law enforcement agencies, prosecutors, defense attorneys, judges, and other relevant parties.

2. RESEARCH METHOD

The author relies on empirical normative legal research, which is a subfield of law that studies the relationship between normative legal provisions and their actual application in practice (law in action). The goal of empirical normative legal research is to identify and evaluate the relevant evidence in order to arrive at a workable solution to a legal issue (Irwansyah, 2020). The Makassar City Port Police, the Makassar District Attorney Branch at the Makassar Port, and the Makassar District Court all participated in this investigation. Factors considered in selecting Makassar City as the study's site include the availability of appropriate data for analysis on how the implementation of borrowing and utilizing evidence of criminal cases is carried out there.

For this research, we focused on the Makassar City Port Police, the Makassar District Attorney's Office at the Makassar Port, and the Makassar District Court, all of which have some sort of connection to the process of lending and using evidence in criminal cases in Makassar City.

This research relied on both primary and secondary sources when it came to the law. Primary legal materials are those with the most weight and authority in the law. Primary sources of law include statutes, official documents or treatises used in the creation of statutes, and judicial judgments (Mahmud Marzuki, 2011). The Makassar City Port Police, the Makassar District Attorney Branch at the Makassar Port, and the Makassar District Court all participated in this investigation. Factors considered in selecting Makassar City as the study's site include the availability of appropriate data for analysis on how the implementation of borrowing and utilizing evidence of criminal cases is carried out there.

The secondary sources of law are mostly derived from scholarly and governmental publications. Books, newspapers, periodicals, journals, and other works that are directly relevant to the topic at hand are all considered legal publications (Mahmud Marzuki, 2011).

After collecting data, descriptive and qualitative analysis are performed. By combining interpretation, judgment, and background knowledge with description, qualitative descriptive analysis describes and describes data and facts gleaned through field research. The data is then interpreted and presented in the form of sentences utilizing the inductive technique, which is a mode of thinking based on basic facts followed by particular conclusions to create recommendations. have the ability to provide novel legal prescriptions or opinions and to address any legal issues that may arise.

3. RESULTS AND DISCUSSIONS

Legal Arrangements for Borrowing and Using Evidence in Criminal Cases

In the process of handling cases at the examination stage at the investigative level, investigators confiscate them to be used as evidence in investigations, in prosecutions and in court trials, with the aim of "evidence", primarily intended as evidence before a trial court. Based on the description above, in order to uphold justice, truth and legal certainty in the evidentiary process at trial, evidence will be used as a basis or reference for law enforcement officials (Amir, 2021)

The definition of confiscation is formulated in Article 1 point 16 of the Criminal Procedure Code, which explains that: "Confiscation is a series of actions by investigators to take over and/or keep under their control movable or immovable objects, tangible or intangible, for the purposes of evidence in investigations, prosecutions and trials".

The confiscation process is laid forth in Articles 38 through 46 and Articles 128 through 130 of the Criminal Procedure Code. In light of these stipulations, the Law differentiates between direct confiscation procedures, such as surrender orders, and indirect confiscation procedures, such as general or ordinary confiscation procedures, confiscation procedures in necessary and urgent circumstances, and confiscation procedures in a state of being caught red-handed. items that ought to be seized by the police to the person who has them (Sumual, 2018).

Borrowing is an agreement in which a party gives goods that are not used up due to use to others for free use, provided that the party who receives the goods after using them or after a certain agreed time, will return them. Loan and use agreements include real agreements, in the sense that the birth of the agreement is not solely based on the agreement of the parties, or a consensual agreement, the formulation of which contains the phrase "binding", but binding if the agreement is followed by the delivery of goods that are the object of study, in this case is the delivery of goods for the use of other parties (Miru & Pati, 2020).

While the concept of "borrowing and using evidence" has emerged in the course of judicial practice, it has not yet been linked to any specific provisions in either the Criminal Code or the Criminal Procedure Code. The sole purpose served by evidence seized in a criminal prosecution is to bolster evidence in preparation for trial. The Criminal Procedure Code's provisions for the temporary seizure and collecting of evidence are intended to be just that.

Theft, fraud, and other general offenses may result in the confiscation of a victim's property, which can then be used as "borrowed evidence" in the context of evidence before a trial. The clause referred to as "borrowing and using evidence" is not designed to seize or confiscate the item permanently, but rather to use it for the sake of a case trial. The evidence may be restored to the rightful owners once the matter has been decided in court.

To guarantee that this evidence may be utilized to enhance evidence in the trial process, the law prohibits the borrowing and use of evidence in criminal cases, which is not without clear and legal grounds. Evidence that has been legally confiscated is now the responsibility of every law enforcement officer at every level of examination, making the practice of borrowing and using evidence extremely vulnerable to risks such as corruption (Competitiveness, 2013): a) The evidence that was loaned was used to commit another crime, law enforcement officials who gave the loan-to-use permit as the party responsible for the evidence could be suspected of having assisted in committing a crime as stipulated in Article 56 of the Criminal Code, b) If the evidence in a criminal case is lost, if the law enforcement officials who are responsible for the evidence in the criminal case cannot be held responsible for the loss of the evidence, then the said law enforcement officers may be suspected of having committed the crime of embezzlement of evidence, c) The evidence of the criminal case is damaged or has its originality changed. Evidence in a case that has been damaged or has had its originality changed will give the impression that law enforcement officials have engineered a criminal case for profit.

The lending and use of evidence in criminal cases at each level of examination is regulated in several regulations that explain how the governance of handling evidence and in each agency responsible for confiscated objects or evidence are as follows: a) Regulation of the Head of the National Police of the Republic of Indonesia Number 8 of 2014 concerning Amendments to the Regulation of the Head of the State Police of the Republic of Indonesia Number 10 of 2010 concerning Procedures for Managing Evidence in the Environment of the Indonesian National Police, b) Attorney General Regulation Number 7 of 2020 concerning the Second Amendment to the Attorney General Regulation Number PER-027/A/JA/10/2014 concerning Guidelines for Asset Recovery. CHAPTER III Numbers (16) and (17), Decision of the Directorate General of General Courts of the Supreme Court Number 21/DJU/SK/OT.01.3/3/2022 concerning Renewal of Standard Operating Procedures (SOP) for Registrar's Office at High Courts and District Courts

Law enforcement officers are tasked with dealing with society's offenses in a competent manner. The crime rate in Indonesia varies widely; nonetheless, the crime addressed is often higher in larger cities; hence, more and more evidence is being uncovered.

Evidence in a criminal case must be protected in accordance with rules established by criminal procedure law. Here, "securing" refers to having the legal right to seek for, accept, and keep the evidence in question until it can be presented in court. When security measures are effective in their intended context, they facilitate and expedite the resolution of an open criminal case.

In Article 6 paragraph (1) of the Criminal Procedure Code, it is explained that investigators are included as follows: a) Republic of Indonesia State Police Officers, b) Certain civil servant officials who are given special authority by law.

They have the power to collect evidence and present it in court. Meanwhile, "in the house for storing confiscated objects of the State" has been designated as the location where evidence would be kept in accordance with the Criminal Procedure Code. If there is no state storage house for confiscated goods in the area, the items can be kept at the location where they were seized, with the Indonesian National Police, the district attorney, the district court, the government bank, or any other location that will accept them under duress. Officials at each stage of examination have several authorities over the evidence, namely:

Return of confiscated objects

The return of confiscated objects is carried out in the event that several conditions occur, namely the object is no longer needed in the interest of proof, the case is stopped in the investigation, the object is "borrowed". Borrowing in this case means returning objects that are not perfect and pure where the objects remain under the responsibility of the agency in accordance with the level of case investigation.

The return of confiscated objects is carried out based on 2 (two) conditions, namely the object is no longer needed in the interest of proof and the case is no longer continued. The legal basis for borrowing and using evidence that must be returned to the person entitled to it is regulated in Article 46 paragraph (1) letters (b) and (c) of the Criminal Procedure Code. It is

different if the object is an object used as a crime or the result of a crime then the object cannot be returned.

Changing status and lending the item

An application for borrowing confiscated items can be made if submitted by the party from whom the object was confiscated. Borrowing of evidence in a criminal case is filed by the applicant as the legal owner of the evidence. If the investigation phase of this case comes to an end, the responsibility for evidence will shift from the investigator to the public prosecutor at the Attorney General's Office. The applicant can re-submit the loan of evidence to the public prosecutor at the Attorney General's Office. Because the public prosecutor's authority over the confiscated objects is almost the same as the authority of the investigating agency at the investigation level.

Regarding the return of confiscated evidence/objects, it is regulated in Article 46 of the Criminal Procedure Code paragraph (1) and (2) which states that: Objects subject to confiscation shall be returned to the person or to those from whom the object was confiscated, or to the person or those most entitled to if: a) The interests of investigation and prosecution no longer require, b) The case was not prosecuted because there was insufficient evidence or it turned out that it was not a crime, c) The case is set aside in the public interest or the case is closed for the sake of law, unless the object is obtained from a crime or used to commit a crime.

If the case has been decided, then the object subject to confiscation is returned to the person or to those named in the decision, unless according to the judge's decision the object is confiscated for the state, to be destroyed or to be damaged until it can no longer be used or if the object is still needed as a evidence in other cases.

Explanation related to Article 46 paragraph (1) of the Criminal Procedure Code, that objects subject to confiscation are required for examination as evidence. During the inspection, it will be known whether the object is still needed or not. In the event that the investigator or public prosecutor is of the opinion that the confiscated goods are no longer needed for evidence, then said goods can be returned to the person concerned or the owner. In returning confiscated objects, as far as possible, attention should be paid to the human aspect, by prioritizing the return of objects that are a source of life.

According to R. Soesilo, in his comments on Article 46 of the Criminal Procedure Code, he said that in returning confiscated objects or evidence there are two kinds of possibilities, namely(Manumpahi, 2021): a) Prior to a judge's decision, confiscated objects or evidence that is no longer used must be returned to: a) The person from whom the item was confiscated, or, b) The person who is most entitled to the item, except if the item was not obtained from a crime or has been used to commit a crime.

After the judge's decision, the object is returned to the person named in the decision, except if the object according to the judge's decision must be confiscated for the state to be destroyed or damaged until it can no longer be used or if the object is still needed as evidence in another case.

When the object is no longer needed as evidence, when the investigation into the case is terminated, or when it is "borrowed," as specified in Article 46, paragraphs (1) and (2) of the Criminal Procedure Code, the object is returned. Returning borrowed items that aren't completely new or pristine is within the purview of the lending agency rather than the investigating agency.

From the above, it follows that Article 44 paragraph (2) of the Criminal Procedure Code, Article 30 of PP No. 27 of 1983 on the Implementation of the Criminal Procedure Code, Article 23 of KAPOLRI Regulation No. 8 of 2014 on Amendments to Chief of Police Regulation No. 10 of 2010 on Procedures for Managing Evidence in the Republic of Indonesia Police, and Article 30 of PP No. 27 of 1983 on the Criminal Procedure Code itself govern the legal arrangements for borrowing and using evidence. According to Article 44 paragraph (2) of the Criminal Procedure Code, a little loan is one that is not warranted. Evidence that is easily damaged or requires high storage costs can be "secured" by officials based on their case level per Article 45 paragraph (1) of the Criminal Procedure Code. However, officials based on their case level have authority to return evidence, change the status of evidence, and lend evidence per Article 30 PP No. 27 of 1983 concerning the Implementation of the Criminal Procedure Code.

Referring to the requirements of the Criminal Procedure Code, the legal foundation for borrowing and utilizing evidence is governed in specific regulations at each stage of examination, rather than having binding and explicit norms in the law. As a result, we anticipate that the Criminal Procedure Code would include more stringent and all-encompassing restrictions addressing the idea of control of lending and use of evidence.

Forms of Legal Protection for Owners of Evidence in Borrowing and Using Evidence of Criminal Cases in Makassar City

Legal protection is a development of the concept of recognition and protection of human rights that developed in the 19th century. As for the direction of the concept of recognizing and protecting human rights, there are restrictions and obligations placed on society and the government(Nola, 2017).Legal protection according to Philipus M. Hadjon, is "protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness"(Mandjo et al., 2021). While legal protection according to Satjipto Rahardjo, is "an effort to organize various interests in society so that there are no collisions between interests and can enjoy all the rights granted by law"(Masnun, 2018). Organizing is done by limiting certain interests and giving power to others in a measurable manner.

Philipus M. Hadjon, divides legal protection into 2 (two), namely "preventive and repressive legal protection. Preventive legal protection is legal protection that aims to prevent disputes, which directs government actions to be careful in making decisions based on discretion, while repressive legal protection is legal protection that aims to resolve disputes.(Yustiningsih, 2020).

Preventive Legal Protection

According to Mr. Brigadier Muh. Dhuhry Maulana, "preventive legal protection against Borrowing and Using Evidence of Criminal Cases in the City of Makassar, including by not giving permission on the grounds that the goods are feared to be lost or changed in form, evidence still has investigative interests, besides that it must look at the investigator's supervisor's consideration whether it is appropriate or not to lent as well as the goods that want to be lent That where the goal must be clear ".

According to Mr. Irtanto Hadi Saputra Rachim, "where borrowing and using evidence must look at the level of urgency whether the high economic value or the goods are urgently needed. Apart from that, in practice, the official who is legally responsible for the confiscated object provides certain conditions that must be obeyed by the recipient of the evidence.

Andi, Nurmawati, also explicitly stated that, "these confiscated objects are forbidden to be used by anyone." According to him, "at any level of examination, be it at the level of investigation, prosecution, and trial, it is permissible and legal to borrow and use evidence, but there are conditions that must be met by the applicant, including not divert, damage, alter and transfer evidence. When the prosecutor's authority is delegated to the court, in general the court will grant a loan-to-use permit when after the witness examination is carried out, and some are permitted before the witness examination is carried out because the witness cannot attend, then the applicant is welcome to apply for the loan-to-use evidence and must be returned when the witness examination begins."

According to him, "the legal rules regarding the lending and use of evidence are guided by the Decree of the Directorate General of the General Judiciary Agency of the Supreme Court No. 21/DJU/SK/OT.01.3/3/2022 concerning Renewal of Standard Operating Procedures (SOP) for Registrar's Office at the High Court and District Court, SOP Number 293/DJU/OT.01.3/3/2022 concerning Borrowing and Using Evidence. The procedure itself has been clearly regulated in the Master List of Criminal Registry SOPs with SOP Number 293/DJU/OT.01.3/3/2022 concerning Borrowing and Using Evidence.

In addition, according to Mr. Brigadier Muh. Dhuhry Maulana, "the act of Borrowing and Using Evidence is based on Article 44 paragraph (2) of the Criminal Procedure Code which explicitly states that: "These confiscated objects are forbidden to be used by anyone."

However, if it is true that the owner of the evidence has rights, and in practice the owner of the object makes a letter of application for borrowing and using evidence, then it becomes a consideration for the investigator whether the evidence is suitable for borrowing or whether the

owner has rights or not, and fulfills the formal requirements required referring to Article 44 paragraph (2) of the Criminal Procedure Code jo. Article 30 PP No. 27 of 1983 concerning the Implementation of the Criminal Procedure Code, and the material requirements within the police institution itself refer to Article 23 of the KAPOLRI Regulation No. 8 of 2014 concerning Amendments to the Chief of Police Regulation No. 10 of 2010 concerning Management of Evidence in the Republic of Indonesia Police Environment.

Mr. Brigadier Muh. Dhuhry Maulana, also explained several basic considerations for us as investigators in allowing the applicant in this case to borrow and use evidence, namely: a) Evidence is a primary need for the applicant to be used for daily needs in earning a living, b) The investigator considers that the applicant who is loaned evidence will not lose or change evidence.

If one or both of the above considerations are met, the investigator will proceed in this case to borrow and use evidence by going through procedures, assessments and considerations according to Article 23 paragraph (4), based on: a) Proof of ownership of legal evidence, b) Willingness to maintain and not change the shape, form and color of evidence, c) Willingness to present evidence when necessary; And, d) Willingness not to transfer evidence to other parties.

Other preventive legal protection by implementing supervision of evidence that is borrowed and used must be reported to investigators 2 (two) times a week, because in the statement letter signed by the applicant it is clearly stated that the applicant will bring the object or item borrowed at any time needed, if the applicant does not bring the object, he will be prosecuted according to the rules that apply to Article 221 paragraph (1) number (2) of Law no. 1 of 1946 concerning Criminal Law Regulations.

According to Mr. Brigadier Muh. Dhuhry Maulana, "the Borrowing Use Evidence permit system is not effective, because when the item cannot be shown or the object is changed in shape or color it can become a polemic in court". Unlike Mrs. Andi. Nurmawati, according to her, "the permit for Borrowing and Using Evidence is very effective because it can help the applicant for the use of evidence in meeting his daily needs, the most important thing is that the purpose is clear, compared to the evidence being left abandoned in Court and not taken care of, because the final decision will clearly be made later." return to those who deserve it".

The Borrowing and Use of Evidence Act has been met with conflicting views. The first is that it is ineffective since it may become a contentious legal issue if the product is no longer manufactured in its original form or if its color or appearance is altered. Second, the Borrowing and Using Evidence Permit is very useful because it allows the applicant to use the evidence for day-to-day purposes; this is preferable to the evidence being left abandoned in court and neglected, as the final decision will clearly be returned to the entitled party.

From the available information, we can infer that law enforcement officials do not casually grant permission to borrow and use evidence out of concern that the goods will be lost or changed, that there is still an interest in investigations, and that they must see whether it is appropriate or not to lend as well as a clear purpose for the item to be loaned before they will do so.

Repressive Legal Protection

First, if the investigation is no longer necessary and the case is not prosecuted due to insufficient evidence or because it is not a criminal act and the case is set aside in the public interest or closed for the sake of law, then confiscated items must be returned to the people or to those who are entitled to them, as stated in Article 46 of the Criminal Procedure Code, as explained by Mr. Brigadier Muh. Dhuhry Maulana. Second, if the case is dismissed, the confiscated item is returned to the owner or owners specified in the decision, unless the judge ordered that the item be kept by the state, destroyed, or damaged until it could no longer be used as evidence of a crime. "What becomes the legal basis for us as investigators in borrowing and using evidence if a dispute occurs other than the Criminal Procedure Code, is also guided by Article 23 of KAPOLRI Regulation No. 8 of 2014 concerning Amendments to the Chief of Police Regulation No. 10 of 2010 concerning the Management of Evidence in the Republic of Indonesia National Police," said Mr. Brigadier Muh. Dhuhry Maulana.

According to Mr. Irtanto Hadi Saputra Rachim, stated that "repressive legal protection related to borrowing and using evidence at the Attorney General's Office must look at Chapter III numbers (16) and (17) of the Prosecutor's Office Regulation of the Republic of Indonesia Number 7

of 2020 concerning the Second Amendment to the Attorney General's Regulation Number PER - 027/A/JA/10/2014 concerning Guidelines for Asset Recovery. In addition, to minimize disputes there is a threat of Article 221 paragraph (1) number (2) of Law no. 1 of 1946 concerning Criminal Law Regulations states that anyone who commits an act of covering up the crime committed, by destroying, removing and hiding evidence and evidence is threatened with imprisonment for a maximum of four years.

Article 233 of the Criminal Law Regulations Act of 1946 states, in relevant part: "Whoever intentionally destroys, damages, renders unusable, loses items that are used to convince or prove something before an authorized authority, deeds, letters, or registers a list which, by order of the general authority, is continuously or temporarily kept, or is handed over to an official, or another person for the public interest, shall be punished by a maximum imprisonme."

Article 7 paragraph 1 letters (f) and (h) of the Republic of Indonesia Attorney General Regulation Number PER-014/A/JA/11/2012 Concerning the Prosecutor's Code of Conduct state, "in carrying out the duties of the Prosecutor's Profession it is prohibited to fabricate legal facts in the handling of cases, and use evidence and evidence that are reasonably suspected to have been engineered or altered or believed to have been obtained th "with respect to the loan-to-use data," Ms. Andi. Nurmawati said, "most of the evidence was returned after an inkracht decision from the panel of judges or handed over to those entitled to receive it."

Article 46 of the Criminal Procedure Code, and Article 23 of KAPOLRI Regulation No. 8 of 2014 concerning Amendments to the Chief of Police Regulation No. 10 of 2010 concerning the Management of Evidence within the Police of the Republic of Indonesia, which is a guideline for investigators in terms of managing evidence with respect to which several informants provided detailed explanations, form the basis for this conclusion. Article 221 paragraph (1) number (2) of Law no. 1 of 1946 concerning Criminal Law Regulations, Article 233 Law no. 1 of 1946 concerning Criminal Law Regulations, Article 10 paragraph (2) letter (h) of the Republic of Indonesia National Police Regulation Number 7 of 2022 concerning the Professional Code of Ethics and the Indonesian National Police Code of Ethics Commission, Article 7 paragraph (1) letter (f) and (h) of Law no. 1 of 1946 concerning Criminal Law Regulations, and Article 7 paragraph (2) letter (h) of Law no. 1 of In accordance with the Prosecutor's Code of Conduct and in an effort to reduce the likelihood of future conflicts, the majority of evidence is either returned after an inkracht judgment by the panel of judges or given to the proper parties. This is done in the name of legal safeguards.

4. CONCLUSION

Legal arrangements for borrowing and using evidence are regulated in: Article 44 paragraph (2) of the Criminal Procedure Code jo. Article 30 PP No. 27 of 1983 concerning the Implementation of the Criminal Procedure Code, Article 23 KAPOLRI Regulation No. 8 of 2014 concerning Amendments to the Chief of Police Regulation No. 10 of 2010 concerning Procedures for Management of Evidence within the POLRI; CHAPTER III Numbers (16) and (17) Republic of Indonesia Attorney Regulation No. 7 of 2020 concerning the Second Amendment to the Attorney General's Regulation No.PER-027/A/JA/10/2014 concerning Guidelines for Asset Recovery; and Decision of the Directorate General of the General Court of Justice of the Supreme Court No.21/DJU/SK/OT.01.3/3/2022 concerning Renewal of SOP for Registrar at PT and PN No.293/DJU/OT.01.3/3/2022 concerning Borrowing and Using Evidence .

The form of legal protection for the owner of evidence in borrowing using evidence, namely preventive legal protection, law enforcement officials do not necessarily give permission to borrow and use evidence because it is feared to be lost or changed form, law enforcement officials in giving permission to see whether it is worth lending, clear objectives based on the level of urgency, and meet the formal requirements referring to Article 44 paragraph (2) of the Criminal Procedure Code jo. Article 30 of PP No. 27 of 1983 concerning the Implementation of the Criminal Procedure Code, and material requirements referring to the rules at each level of examination, and repressive legal protection, namely Article 46 of the Criminal Procedure Code, to minimize disputes Article 221 paragraph (1) number (2) and Article 233 of Law No. 1 of 1946 concerning Criminal Law Regulations, Article 10 paragraph (2) letter (h) of POLRI Regulation No. 7 of 2022 concerning the Code of Professional Ethics and the POLRI Code of Ethics Commission, Article 7 paragraph (1)

letter (f) and (h) of the Attorney General Regulation of the Republic of Indonesia No.PER014/A/JA/ 11/2012 concerning the Code of Conduct of Prosecutors and to avoid disputes most evidence is returned after an *inkracht* decision from the Court. In connection with the practice of borrowing and using evidence, when referring to the provisions of the Criminal Procedure Code, the legal basis for borrowing and using evidence does not have binding and clear rules in the legislation, but is regulated in special rules at each level of examination. So it is hoped that there will be stricter and more comprehensive rules regarding the concept of regulation of lending and use of evidence specifically in the Criminal Procedure Code. In an effort to protect the owner of evidence in borrowing and using evidence, the public, in this case the victim of a crime, still experiences problems in borrowing confiscated possessions for the purposes of examination, therefore law enforcement officials are deemed to need to educate and convey properly and clearly related to the reasons and grounds for refusing to borrow and use evidence because the borrowing and use of evidence concerns other people's property rights which are part of human rights.

Research can contribute by analyzing aspects of human rights protection in the use of loan-to-use tokens in Makassar City. You can identify potential violations of privacy, data security or other individual human rights that may arise as a result of using credit-use tokens. Thus, your research can provide recommendations to ensure that human rights are maintained along with the use of loan-to-use evidence. By carrying out this research and contributing your findings, you can assist in developing understanding and improving the implementation of loan and use evidence in criminal cases in Makassar City.

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