

# Forensic Autopsy Implementation in Unnatural Deaths to Achieve Material Truth

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## ABSTRACT

Uncovering cases of unnatural death is crucial for the purpose of law enforcement. However, the investigation of these cases often faces challenges, particularly when it comes to obtaining information about the causes and circumstances of death, which can be revealed through forensic autopsies based on medical principles. Unfortunately, the rejection of forensic autopsies by the victims' families poses a significant obstacle. This research aims to explore and analyze the legal implications that arise from the family's refusal of a forensic autopsy, with the ultimate goal of ensuring effective law enforcement against families who reject such procedures. Additionally, the study seeks to find solutions for conducting forensic autopsies in order to uncover the material truth behind criminal cases involving unnatural deaths. The research adopts a normative juridical approach, focusing on examining theories, concepts, legal principles, and relevant laws and regulations. Secondary legal materials are analyzed qualitatively through library research techniques. The findings of this study underscore the need for comprehensive legal reforms that address the implementation of forensic autopsies in cases of unnatural deaths, in order to facilitate the pursuit of material truth.

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## I. INTRODUCTION

Forensic Medicine is a medical science that studies the application of medical science in upholding justice (Naufal *et al.*, 2021). Broadly speaking, this science can be divided into three groups of fields of science, namely forensic pathology, clinical forensics and forensic laboratory science. This science has been conducted since the beginning of AD, namely in the autopsy case of the corpse of Caesar who died from a stab that was only 1 (one) stab that went straight through the heart (Aflanier *et al.*, 2017).

Forensic Medicine or also known as Legal Medicine/Forensic Medicine is one of the specialised branches of medical science that studies the use of medical science for the benefit of law enforcement and justice (judicial and non-judicial) (Jovita & Kusumaningrum, 2022). A forensic specialist doctor is a specialist doctor who has passed a special formal education period after obtaining a general practitioner Sp.F which aims to fulfil the public's sense of justice with scientific steps (Aflanier *et al.*, 2017).

Forensic Medicine is needed when there is a death that is considered unnatural, such as an accident, suicide or murder. To find out and determine the exact cause of death and determine the true forensic corpse, forensic surgery is needed, which leads to the goal of finding material truth or true truth in the examination of criminal cases. The cause of death of the victim of the crime of murder correlates with criminal liability and sanctions (Halim *et al.*, 2022)

The causal relationship between the actions of the perpetrators and the consequences caused by them according to medical science should be proven through forensic post-mortem examination (Samsudi *et al.*, 2021; Widowati *et al.*, 2021). According to Eddy Hiarij, "de leer van de causaliteit or the theory of causal relationship is very important in determining liability for offences formulated materially, because the consequences caused are elements of the offence" (Hiarij, 2014).

Unnatural death is one of the criminal offence cases that must be resolved for law enforcement. The settlement of death offence cases is often constrained by the lack of information regarding the cause, manner and mechanism of death whether the death is natural or unnatural. Therefore, a special study is needed in the causes, methods and mechanisms of death based on the principles of Forensic Medicine, if you want to know the cause of death of a person, an autopsy is absolutely necessary, especially in unnatural deaths (Lutfitaningtyas & Astuti, 2017).

Information about autopsy results is needed in an effort to seek clarity and complete material truth about an act or criminal offence that has occurred in the case of murder, so forensic medicine is needed (Kusmayadi, 2013).

In a criminal case that causes death, doctors are expected to find abnormalities that occur in the body of the corpse (Cahyo & Muala, 2022). If changes occur, it is important to identify the cause and impact on the health of the corpse. It is expected that the doctor can explain the cause of the individual's death, the mechanism of death, and estimate the manner of death. An autopsy examination is necessary to obtain all of this information as supporting evidence.

The autopsy of a corpse cannot be carried out juridically if it is not based on an order from the investigator or investigator and also the permission of the victim's family. A corpse autopsy can also only be carried out on a corpse whose death is considered unnatural. If someone dies whose death is considered unnatural, according to statutory regulations the corpse must be autopsied (Bakhtiar, 2019; Saputra *et al.*, 2021). The legal basis for the implementation of forensic autopsies in Indonesia is Article 133 and Article 134 of the Criminal Code (KUHAP).

Whether or not there is a relationship between the modus operandi (the way a person acts) and the cause of death of the victim can be known if an autopsy is performed on the victim's body. Clarity on whether or not there is a relationship between the modus operandi and the cause of death is an urgent matter to be used as evidence in court (Bakhtiar *et al.*, 2019; Flora, 2019; Solarino *et al.*, 2019; Tavone *et al.*, 2022).

Material truth as the goal of criminal procedure law is to seek and obtain at least close to the material truth. The effort to seek and find material truth (materiele waarheid) in criminal procedure seems to be something that is natural and should be done (Makapuas, 2019; Monintja *et al.*, 2021).

Forensic autopsies that play a role in determining criminal offences are found in several criminal cases in courts in Indonesia (Kumean *et al.*, 2022; Rastra *et al.*, 2020). One example is in Case Decision Number: 213-K/Mil/2019 jo. Number 48-K/PM I-03/AD/IV/2019 which stated that the defendant named Yhonrua Rajagukguk was not proven guilty of directly causing the death of the victim named Sahat Wira Anugerah Sitorus, because based on the results of the autopsy conducted by Mohammad Tegar Indrayana, it was concluded that the victim's death was the result of severe malaria suffered by the victim and beatings carried out by witness -1 named Simson Canra Aritonang, not by the defendant.

This can be shown in the judgement in relation to the above case, where according to the charges, the defendant was accused of committing maltreatment which resulted in the death of the victim. However, after verification through an autopsy, it was concluded that the cause of the victim's death was the result of severe malaria, and the beating was not committed by the defendant, but by another witness. Based on this case example, it can be said that the function of autopsy as a tool to reveal material truth is not only to prove the guilt of the defendant, but also to prevent false accusations or charges.

In carrying out forensic autopsies to uncover suspicious death cases, various obstacles are often encountered. One common obstacle is the rejection by the victim's family. This often arises because until now there is no strict regulation that requires forensic autopsies to be carried out in this country. The provisions contained in Article 134 of the Criminal Procedure Code are not compelling and do not provide an obligation for law enforcement to conduct forensic autopsies in cases of suspicious deaths.

Until the time of this writing, there are still parties in Indonesia who refuse to perform forensic autopsies, which has an impact on the low implementation of forensic autopsies. The absence of a forensic autopsy in suspicious death cases becomes an excuse for the inability to determine the exact cause of death, and can lead to doubts when judges give judgements in court. For example, in several murder case verdicts that the author observed in the Directory of Supreme Court Decisions, there were several verdicts that could not state the exact cause of death of the victim because no autopsy was conducted on the victim's body.

Based on the above explanation, there is a conflict regarding forensic autopsies. On the one hand, the law requires autopsies to be carried out on bodies that died suspiciously because of their importance as evidence, but on the other hand the law does not explicitly regulate the legal consequences that must be faced if the victim's family refuses the forensic autopsy, which becomes the problem identification in writing this article are: 1) How is the implementation of forensic autopsy in Indonesia in unnatural deaths related to Article 133 and Article 134 of the Criminal Procedure Code in an effort to achieve material truth in court?; and 2) What are the legal consequences arising in the event of refusal by the victim's family to carry out a forensic autopsy in an effort to uncover an unnatural death case?

## II. RESEARCH METHOD

The research method that can be done to answer this research question is to conduct a literature study to collect information and review relevant literature regarding the implementation of forensic autopsies in Indonesia, related laws and regulations, and the conflicts that occur between the need for forensic autopsies and the rejection of the victim's family. Analyzing legal documents, such as Article 133 and Article 134 of the Criminal Procedure Code (KUHAP), to understand the obligations and provisions related to the conduct of forensic autopsies in cases of unnatural death. Case Study: Conducting case studies of court decisions involving forensic autopsies to find out how the implementation is linked to Article 133 and Article 134 of

the Criminal Procedure Code and the legal consequences arising in the event of refusal from the victim's family. Data Analysis: Analyzing data that has been collected from various sources using qualitative and quantitative approaches qualitatively. Data can be analyzed by content analysis method, descriptive analysis. Interpret the results of data analysis to answer research questions and conclude comprehensive research findings. Furthermore, provide recommendations based on the research findings.

### III. RESULTS AND DISCUSSION

#### A. Implementation of Forensic Autopsy in Indonesia in Uncovering Cases of Unnatural Death in Relation to Article 133 and Article 134 of KUHAP

In the Big Indonesian Dictionary, Autopsy is defined as the examination of a corpse by means of surgery to determine the cause of death. The word autopsy comes from the Latin *otopsia* which means corpse surgery. In English, this autopsy is known as autopsy, which means examination of the body of a dead person to find the cause of death (Asmadi, 2020).

In medical terminology, an autopsy is an act of investigation or examination of a corpse including tools or organs in the body and its composition after surgery or injury with the aim of determining the cause of death either for medical or legal purposes as a mystery solver of a crime (Hatta *et al.*, 2019).

An autopsy can also mean a death examination or examination of the body of a deceased person or corpse, to ascertain the cause of death, see the severity of the disease suffered, and find out the results of treatment or surgery that has been carried out (Sondik *et al.*, 2003).

In general, an autopsy will be performed on the death of someone who is considered unnatural. The person who can perform an autopsy is a forensic doctor or pathologist who is a medical doctor who has been a resident for 4 years in the field of anatomical pathology or other doctors or experts, as specified in the legislation (Hadi *et al.*, 2022; Kastubi, 2016).

In terms of its purpose, an autopsy can be divided into three types. First, anatomical autopsies are performed for the educational purposes of medical faculty students. The corpse used is a corpse that is not claimed by the heirs and has been stored in the Judicial Medical Sciences laboratory for 2x24 hours before being preserved in the anatomy laboratory. According to the law, if no one claims it after 3 years, the corpse will become the property of the state in accordance with Article 1129 of the Civil Code. There are also situations where a person bequeaths their corpse to the medical faculty after death, which is governed by Article 935 of the Civil Code.

Secondly, a clinical autopsy is performed on the corpse of a person suspected of dying from an illness. The purpose of a clinical autopsy is to determine the exact cause of death, compare clinical diagnosis with post-mortem diagnosis, understand the pathogenesis of disease, and so on. Clinical autopsies are performed with the written consent of the heirs, or sometimes the heirs request it themselves.

Third, forensic or medicolegal autopsies are performed on the corpse of a person suspected of dying from an unnatural cause, such as an accident, murder, or suicide. This autopsy is performed at the request of the investigator in the context of investigating a case. The objectives of a forensic autopsy are: (1) to identify a person whose identity is unknown or unclear, (2) to determine the cause of death, mechanism of death, and time of death with certainty, (3) to collect and examine signs of evidence that can be used in determining the identity of the object that is the cause and perpetrator of the crime, and (4) to make a written report based on facts in the form of a *visum et repertum*.

In other purposes, Forensic Autopsy can be grouped into three parts (Kastubi, 2016), namely:

- a) Educational Forensic Autopsy: These autopsies are performed for educational purposes, where medical students or other health education participants perform surgical procedures on cadavers as a practicum to study the anatomical structure of the human body. This practice aims to enable them to recognise the organs of the body and detect abnormalities or diseases in the body for the purpose of diagnosis or determination of the cause of death.
- b) Scientific Forensic Autopsy: This autopsy is performed on a corpse that has died in the hospital after undergoing maximum medical treatment. The aim is for medical personnel to find out the disease that caused the patient's death. If the disease is contagious or has the potential to cause an outbreak, preventive measures can be taken immediately for the benefit of the general public.
- c) Judicial Forensic Autopsy: This autopsy is performed with the aim of seeking the legal truth regarding an incident that resulted in the death of a person, such as suspected murder, suicide, or an accident. This kind of autopsy is usually carried out at the request of investigators or investigators from the police or judicial institutions to ascertain the cause of death and determine whether there is a criminal offence involved. The results of this autopsy are recorded in the form of a *visum et repertum*, which becomes influential evidence in the judicial process. If the cause and perpetrator are already known before the autopsy is performed, the *visum et repertum* serves as confirmation. However, if the cause and perpetrator are not yet known for certain, an autopsy can reveal an

unnatural death, and the visum et repertum serves as evidence that can indicate the cause of death and possible perpetrators involved.

In medical terminology, forensic autopsy refers to the process of investigating or examining a corpse that includes all organs and internal structures to find the cause of death, both for the benefit of medical science and to unravel mysteries in criminal cases. According to the 2001 Circular Letter of the Minister of Health, a forensic autopsy is a surgical examination of a corpse that involves opening the cavities of the head, neck, chest, abdomen, pelvis, and further examinations needed to determine the cause of death and obtain important clues that can be used in investigations and evidence in court (Naufal *et al.*, 2021; Widowati *et al.*, 2021)

In the context of cadaver surgery, autopsy procedures are performed by opening various parts of the body from the head, neck, chest, abdomen, to the pelvis to determine the cause of death of the individual. In the context of forensic autopsy, the main purpose of this corpse dissection is to collect clues that can be used in law enforcement, both at the investigation, investigation, and proof stages in court.

In other literature, Menezes and Monteiro states that:

*A forensic autopsy is an examination conducted postmortem to address medicolegal objectives. A forensic autopsy is also called a medicolegal autopsy. The performance of a forensic autopsy follows instructions from the concerned legal authority responsible for the medicolegal investigation of sudden, unexpected, suspicious, mysterious, unwitnessed, obscure, unexplained, or litigious deaths, criminal deaths, industrial deaths, and deaths associated with medical or surgical treatment where medical negligence is alleged or anaesthetic deaths. In brief, all deaths of unnatural (homicide, suicide, accident) manner, suspicious deaths, and unexpected deaths necessitate a legal investigation, which includes an autopsy as a portion of the evidence-gathering process (2022, p. 1).*

Abdul Mun'im Idries states that a forensic autopsy can reveal also know the clarity of the cause of death of a person, the ways of death, whether due to murder, suicide, or accident or die due to a disease. Based on this opinion, it can be clarified that with a forensic autopsy, the veil of the cause of death can be unravelled and revealed scientifically and the truth is tested (Astuti & Koswara, 2021; Widowati *et al.*, 2021).

In cases of unnatural death with suspected criminal elements in it, forensic autopsies are usually carried out starting from the investigation process carried out by police officers. Autopsies play a very important role in unravelling the mystery of unnatural death cases. This is very helpful for the investigator in making decisions on the continuation of the investigation. In addition, with the autopsy results in the form of a visum et repertum, the investigator will also get certainty that the case he is handling will not result in wrong accusations (Widowati *et al.*, 2021).

The results of the forensic autopsy examination are written in a letter called a visum et repertum. The term visum et repertum is mentioned in Staatsblad 1937 Number 350 concerning visa reperta. In relation to these regulations, in essence, the visum et repertum made by a doctor is limited in its evidential value to what the doctor sees or finds during the examination of the victim or in other words, the doctor is only considered to provide eye testimony and the validity of the visum et repertum if it is made by a doctor who has taken an oath of office as a doctor (Afandi *et al.*, 2022).

The implementation of a forensic autopsy in the examination of an unnatural death case is highly dependent on the request made in writing by the investigator to the designated party, which in this case is the organizers of health facilities that have the competence to do so, either a health centre or hospital. The doctor will perform an autopsy according to what is requested in the written request letter, then put the results into a visum et repertum. Thus, if the investigator does not ask for an examination of the inside of the body, then the visum et repertum maker does not need to perform an autopsy on the corpse.

In relation to death cases, forensic autopsy is the basis for drawing conclusions outlined in the visum et repertum. The results of the forensic autopsy itself will not be able to show the criminal who has caused the victim to die, but the results of the forensic autopsy as outlined in the visum et repertum are the basis for the judge's consideration to impose a sentence for the perpetrator's actions against the victim. In other words, forensic autopsy results can function as a measure in determining the criminal liability of the perpetrator.

The implementation of forensic autopsy in Indonesia in uncovering unnatural death cases can be linked to Article 133 and Article 134 of the Criminal Procedure Code (KUHAP). Article 133 of the Criminal Procedure Code regulates the obligation of the authorities to conduct an autopsy in cases of suspicious deaths. According to this Article, if there is an unnatural death and an autopsy examination is required to determine the cause of death, the investigator or investigating authority has the authority to order an autopsy of the corpse.

Meanwhile, Article 134 of KUHAP provides provisions regarding permission from the victim's family to conduct an autopsy. This article states that a corpse autopsy can only be carried out if there is an order from the investigator or investigator and also permission from the victim's family. This provision indicates the need for consent from the victim's family to carry out a forensic autopsy.

In practice, authorities, such as investigators, usually request permission from the victim's family to conduct an autopsy. However, if the victim's family refuses or does not give permission, the conduct of the autopsy may be hindered. The inability to perform an autopsy in suspicious death cases can create difficulties in determining the exact cause of death and can affect the judicial process.

In the context of the research, the implementation of forensic autopsies in Indonesia can be studied by analysing how Article 133 and Article 134 of the KUHAP are applied in practice. Case studies of court decisions involving forensic autopsies can provide an understanding of how implementation is linked to these legal provisions and what legal consequences arise in the event of rejection by the victim's family.

By studying the implementation of forensic autopsies in Indonesia and its relationship with Article 133 and Article 134 of the Criminal Procedure Code, a more comprehensive understanding of the implementation of forensic autopsies in uncovering cases of unnatural death and conflicts related to refusal from the victim's family can be obtained.

### *B. Legal Consequences for Families Who Refuse Forensic Autopsies in Indonesia*

Several cases of forensic autopsy refusal have occurred, especially in Indonesia. In general, the reason for the rejection of forensic autopsy is religious. They argue that the act of dissecting a dead person is prohibited by religion. However, if we dig deeper, religion, especially Islam, does not prohibit performing forensic autopsies as long as it is considered important and for the sake of achieving human welfare.

More clearly about this autopsy if it is related to Islamic law, in Indonesia a Fatwa of the Indonesian Ulema Council No. 6 of 2009 has been issued regarding Corpse Autopsy. In the MUI decision, autopsy of the corpse is only allowed if there is a need determined by the party who has the authority to do so. The autopsy as intended in number 2 is that the autopsy must fulfil the following conditions:

- a) The autopsy of the corpse is carried out with the aim of finding out the cause of death, education, law enforcement or research in the field of medical science only and is only carried out by an authorised institution and must also be carried out by experts in that field.
- b) If it is known that an autopsy is the only way out to achieve the objectives referred to in point a.
- c) The corpse must still be washed, shrouded, prayed for and buried must be done immediately in order to fulfil its rights as a corpse according to the teachings of Islam.
- d) Autopsy of the corpse can be done after there is permission either from the dead person while still alive or from the family who is the heir or from the authorised government.

Based on the principles that emphasize the dignity of human beings and the prohibition of violating their honor, both during their lifetime and after death, the Indonesian Ulema Council (MUI) generally considers autopsy on corpses as forbidden (haram). However, if it is deemed necessary in emergency situations, particularly in criminal cases where autopsy is crucial to solve the problem, MUI deems it permissible.

Furthermore, upon further investigation, the frequent refusals to undergo autopsy are often due to the lack of clear legal basis that explicitly regulates the mandatory nature of forensic autopsies. This confusion affects various parties, especially the Indonesian National Police (POLRI) investigators. On one hand, investigators are fully aware of the importance of forensic autopsies in uncovering suspicious deaths. However, on the other hand, they lack sufficient legal basis to "enforce" the execution of such procedures. The absence of clear legal grounds also leads to a lack of juridical consequences, including criminal penalties, for anyone who refuses to undergo forensic autopsies.

In other countries, particularly in the United States and its states, forensic autopsies have become a standard procedure in cases of suspicious deaths. This practice is not influenced by the presence or absence of consent from the family, as stated in an article published by (Maryland.gov, n.d.), which states that:

*Before an autopsy can be performed in the instance of a non-medical examiner death (i.e. death during a hospital stay), the next of kin must grant permission. However, when state law requires the medical examiner to perform an autopsy, family permission is not required. A family may object to an autopsy because of religious beliefs, as stated in Maryland Statute.*

In New Mexico, which is also a state in the United States, as stated by The New Mexico Office of the Medical Investigator, permission from the closest family members is not required to perform a forensic autopsy. The following statement clarifies this:

*A medicolegal (forensic) autopsy is ordered by the coroner or medical examiner as authorized by law with the statutory purpose of establishing the cause of death and answer other medicolegal questions. The next-of-kin does not authorize and may not limit the extent of the autopsy. Common questions include the identity of the deceased person, the time of injury and death, and the presence of medical evidence (for example bullets, hair, fibers, semen) (Office of The Medical Investigator, 2023).*

The same principle is also applied in neighboring Malaysia, as stated in a journal article written by Nadesan: "A postmortem examination may become necessary in certain deaths that come up for inquests. In these situations, the authority which conducts the inquest will order a doctor to perform a medico-legal autopsy. In such a circumstance, consent from the relatives of the deceased is not required"(Mrcpath, 1997; Thiis *et al.*, 2022; Ukey *et al.*, 2023; Verma *et al.*, 2020).

In Malaysia, the regulations governing forensic autopsies or medicolegal autopsies related to unnatural

deaths are found in Chapter XXXII of the Criminal Procedure Code of Malaysia. The reason why these countries believe that family consent is not required for forensic autopsies is that refusal from the family may hinder the authorities' work, and the examination of matters related to the cause of death may not be achieved. It is understood that autopsies must be performed as soon as possible. If possible, a forensic autopsy should not exceed three days from the time of death, as the accuracy of the data decreases over time. These countries also believe that if a judicial process regarding an unnatural death case is concluded without a forensic autopsy, the material truth will not be fulfilled. Therefore, forensic autopsies must be carried out without requiring consent from the family.

However, as a formality, it is still customary to inform the legitimate heirs about the implementation of a forensic autopsy. The deceased body is handed over to a forensic pathologist by the investigators, and the forensic team returns the autopsied body to the investigators. The investigators then officially hand over the body to the legitimate heirs for burial or final disposition.

In Malaysia, objections to the mandatory nature of autopsies in cases of unnatural death often arise, especially because the majority of Malaysian citizens are Muslims. Religious reasons are the main factor underlying these objections. However, even so, forensic autopsies must still be performed.

The absence of provisions mandating autopsies in the Criminal Procedure Code provides strong grounds for all parties to refuse autopsies. It is not only the family that can refuse; even forensic medical professionals can decline with the same reason.

Based on these considerations, the author believes that autopsies are crucial in uncovering cases of unnatural death. This is because forensic autopsies are closely related to legal efforts in achieving material truth. Therefore, the author believes that a legislation should be implemented in this country that mandates forensic autopsies in cases of unnatural death. In performing this procedure, it is preferable to eliminate the need for family consent, as practiced in other countries mentioned earlier. This should be done to ensure legal certainty for all parties, considering the importance of achieving material truth in all criminal cases. Additionally, there should be a rule with criminal penalties for anyone who attempts to refuse, obstruct, or sabotage the implementation of forensic autopsies as a warning to the entire Indonesian society, especially the families of victims suspected.

#### IV. CONCLUSION

The ambiguity of legal regulations regarding the implementation of forensic autopsies to uncover cases of natural death creates a dilemma for various parties, including investigators, medical professionals responsible for conducting autopsies, and the general public seeking material truth in every case, especially cases of unnatural death. On one hand, these parties recognize the importance of forensic autopsies, but on the other hand, the lack of clear legal provisions leads to a situation of uncertainty. This situation often arises when the closest family members of the victim do not give permission for the autopsy to be performed. Article 133 and Article 134 of the Criminal Procedure Code (KUHAP) are considered insufficient in providing the necessary regulations because these articles indicate that autopsies can only be conducted with authorization and the consent of the family. What needs to be emphasized in these provisions is the requirement for consent from the family of the victim. The absence of further provisions in this regard implies that KUHAP does not allow the performance of autopsies without the consent of the victim's family. Considering the importance of forensic autopsies, the author believes that legislation should be enacted to regulate this procedure. Such legislation should not only mandate the implementation of forensic autopsies for bodies suspected of experiencing unnatural death but also establish legal consequences for refusing to consent to a forensic autopsy.

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#### CONFLICT OF INTEREST

Authors declare that they do not have any conflict of interest.

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