

## Families of Victims Often Reject Forensic Autopsies in Cases of Unnatural Death

Amalul Arifin Slamet<sup>1</sup> Nandang Sambas<sup>2</sup> Ade Mahmud<sup>3</sup>

<sup>1,2,3</sup>Universitas Islam Bandung, Indonesia

Correspondent: [dosen10036@unpam.ac.id](mailto:dosen10036@unpam.ac.id)<sup>1</sup>

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**ABSTRACT:** Forensic autopsies are integral to determining the exact cause of someone's death. In Indonesian criminal law, specifically Articles 222 of the Criminal Code and Articles 133-134 of the Criminal Procedure Code (KUHAP), provisions regarding forensic autopsies are outlined. However, there are challenges in implementing the requirement to notify the victim's family about the autopsy, which can hinder the enforcement of law in cases of unnatural deaths. It's crucial to note that only through forensic autopsies can material truths be scientifically revealed, from the initiation of investigations to the presentation of evidence in court. Legal cases and final court decisions underscore the importance of forensic autopsies in proving cases categorized as material criminal offenses. Therefore, in cases of unnatural deaths, the execution of forensic autopsies should not necessarily depend on the victim's family consent to ensure fair legal certainty for all parties involved - the victim, perpetrator, and society. This study aims to understand the role of forensic autopsies in unnatural deaths and examine cases where the victim's family rejects the autopsy based on Article 222 of the Criminal Code in conjunction with Articles 133-134 of the Criminal Procedure Code. The research methodology combines normative and empirical approaches to analyze applicable legal norms and their application in events to achieve predefined objectives. Findings indicate that the refusal of the victim's family to consent to a forensic autopsy in unnatural deaths significantly impacts court decisions, potentially obstructing law enforcement agencies in resolving cases. Even if the family objects, law enforcement agencies must continue their duties, as forensic autopsies are vital for court evidence, typically presented as a report issued by forensic experts or doctors under police instruction. During trials, victims can still attain legal certainty and justice. Forensic autopsies should align with existing laws. It is hoped that from this research the implementation of forensic autopsies can proceed as regulated in criminal laws and regulations.

**Keywords:** Victim Family Rejection, Forensic Autopsy, Unnatural Death.



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## INTRODUCTION

Autopsy, also known as post-mortem examination, is a medical procedure generally understood as the surgical examination of a deceased human body. According to medical dictionaries, an autopsy is a post-mortem examination of a corpse to determine the cause of death or the nature of pathological changes, also known as necropsy (Danis, 2009). Government Regulation Number 18 of 1981 regarding Clinical Cadaver Surgery, Anatomical Cadaver Surgery, and Transplantation of

Human Body Organs and Tissues, along with Minister of Health Circular Letter Number 1342/MENKES/SE/XII/2001 regarding the Implementation of Forensic Autopsies (hereinafter referred to as the 2001 Minister of Health Circular Letter) are regulations governing forensic autopsies in Indonesia (Dhoble et al., 2022; Kaur et al., 2023; Kuatrakul & Vachirawongsakorn, 2023; Yamada et al., 2023).

Referring to Government Regulation Number 18 of 1981 and the 2001 Minister of Health Circular Letter as mentioned above, we can understand the types of autopsy or cadaver surgery, which include: clinical cadaver surgery, anatomical cadaver surgery, and forensic cadaver surgery. The differences in the types of cadaver surgery are related to the nature and purpose of conducting the surgical procedure itself. Cadaver surgery related to legal proceedings is called forensic cadaver surgery or forensic autopsy. In this context, the focus of the study on cadaver surgery is on forensic cadaver surgery or, using the term forensic autopsy, which holds a significant position in law enforcement, both in criminal law and civil law (J et al., 2023; Lévasseur et al., 2023; Manish et al., 2019; Miller et al., 2023).

It is imperative to conduct a cadaver surgery on someone who has died as a result of a criminal event or at the very least has indications of foul play in the death process. This is because without performing a cadaver surgery (autopsy), the examination conducted by doctors would only be superficial (based on what is visible physically and palpable in general). If someone dies due to an act of violence, there is a possibility that the person may have died first, and then was assaulted, or perhaps was assaulted until the person died. To determine both scenarios, a cadaver surgery (autopsy) is necessary (Chandan & Venu, 2019; Šarkić et al., 2022).

From a criminal law perspective, criminal offenses against the body and/or life are formulated in the Criminal Code as material criminal offenses or also known as material delicts. The formulation of criminal offenses as material has legal consequences in the proof of cases, where there must be a causal relationship between the defendant's actions and the prohibited consequences under the law or a cause-and-effect relationship between specific actions and prohibited consequences. Specifically, in criminal offenses resulting in unnatural death, the mechanism of proof is conducted through forensic medical examination of the deceased.

The final outcome of the examination of a deceased person related to a criminal event is documented in the form of a report called "visum et repertum" on the body. The examination of the body in the preparation of the "visum et repertum" can be done through 2 (two) methods: external examination of the body and internal examination of the body (cadaver surgery/forensic autopsy) (Ohoiwutun, 2016). Forensic cadaver surgery is a way to determine the exact cause of someone's death, and only through forensic cadaver surgery can the exact cause of death be uncovered and identified. However, in law enforcement, forensic cadaver surgery is not always conducted in cases of death or incidents related to criminal activities. The absence of a forensic autopsy does not result in the defendant being acquitted of criminal responsibility for the crime committed if the defendant is proven guilty based on the legal facts revealed during the trial. From a criminal law perspective, the lack of a forensic autopsy in death cases can be said to not fulfill the objective of material truth as intended in every criminal case examination process, and this is worth examining and scrutinizing. Despite this, the law guarantees the implementation of forensic autopsies in cases of death suspected to be caused by criminal events (Chaitanya et al., 2022; Jayaram et al., 2023).

The regulations and urgency of forensic autopsies are determined in Article 222 of the Indonesian Criminal Code (KUHP), and Articles 133 and 134 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) as the main sources of formal criminal law in Indonesia. In

these laws, the importance of forensic autopsies is explicitly regulated, along with their legal consequences. However, forensic autopsies are not always carried out in law enforcement practices in cases of death. The classic reason for this is the objection from the victim's family, which leads to law enforcement agencies, especially the Indonesian National Police investigators, not conducting forensic autopsies.

The author suggests that the urgency of forensic autopsies is not widely understood, despite the regulations already governing them. The failure to conduct forensic autopsies with any justification, in cases of unnatural death, has the potential to set a bad precedent for law enforcement in the future.

Forensic autopsies are positioned in the pre-adjudication phase within the criminal justice system, and it is the responsibility of the Indonesian National Police (Polri) investigators to carry them out (Ohoiwutun, 2014). Before reaching the investigation phase, police actions begin with case inquiries. With the assistance of forensic medicine, crimes against the body or life can be determined to proceed with or terminate the case process. Involvement of other disciplines outside criminal law (in this case, forensic medicine) is inseparable from the purpose of criminal case examinations, which is to discover material truth or true facts, and in cases of death, forensic autopsy plays a crucial role in proving the case by identifying the cause of death.

Forensic autopsy can determine whether a victim's death resulted from another person's violent actions or occurred naturally (natural death) (Kastubi, 2016). The important and strategic position of forensic autopsies is not only about uncovering the mystery of someone's cause of death but also, from a criminal law perspective, their existence is related to determining the defendant's culpability. The causal relationship between the defendant's actions and the victim's death is the parameter for determining the defendant's guilt, which correlates with criminal responsibility.

The topic of forensic autopsy or forensic dissection has not been extensively covered, however, as a conceptual study material, the author considers it important to include some writings that distinguish this conceptual writing from previous authors. The article titled 'Corpse Dissection and Its Legal Consequences' was written by Yukilfi Poluan with the aim of determining the cause of death, both for medical science purposes and to solve the mystery of deaths caused by criminal events, with a study based on Law Number 30 of 2009 concerning Health (hereinafter referred to as the Health Law), and Government Regulation Number 18 of 1981 concerning Clinical Corpse Dissection and Anatomical Corpse Dissection as well as Transplantation of Human Body Organs or Tissues (Poluan, 2014).

The problem that will be discussed in this research is the role of forensic autopsy in unnatural deaths and what if a forensic autopsy is rejected by the victim's family based on Article 222 of the Criminal Code (KUHP) in conjunction with Articles 133-134 of the Criminal Procedure Code (KUHP). Criminal Procedure Code).

## METHOD

In this research, the type of research used is empirical normative research. Empirical normative research is used to analyze or understand to what extent regulations or laws are effectively implemented. The method of empirical normative research combines normative legal aspects with the addition of empirical data or elements.

The function of empirical normative research is to implement normative legal provisions (laws) in action in specific legal events that occur in a society. In this research, there are three categories: First, Non-Judicial Case Study is a legal case study approach without conflict, thus not involving the judiciary. Second, Judicial Case Study is a legal case study approach involving conflict, requiring intervention from the judiciary to provide resolution (jurisprudence). Third, Live Case Study is an approach to legal events that are ongoing or not yet concluded (Asikin, 2012). Aligned with the title and the issues to be discussed in this research, and in order to provide beneficial results, this research is conducted using empirical normative research (Sugiono, 2003).

The author also took and explored information from West Jakarta Metro Police Investigators, the DKI Jakarta High Prosecutor's Office, and academics from Pamulang University regarding the importance of forensic autopsies in unnatural deaths and how they are carried out when the victim's family refuses to have a forensic autopsy performed.

## **RESULT AND DISCUSSION**

### **1. The Role of Forensic Autopsy in Unnatural Deaths**

From the perspective of medical science, in general, ways of death are distinguished, that is, reasonable or unreasonable. In natural death due to disease or old age, and unnatural death due to various forms of violence (murder, suicide, work accident or traffic accident), deaths due to medical procedures, drowning, intoxication, and deaths that are not clear cause (Abdul Mun'im, 2013)

Autopsy in Indonesia remains taboo as many people still consider it inappropriate for deceased individuals. However, autopsies can provide clarity regarding the cause of death, especially in cases of unnatural deaths. Resolving criminal cases involving death is often hindered by a lack of information about the cause, manner, and mechanism of death. Therefore, it is necessary to thoroughly investigate the cause, manner, and mechanism of death.

Autopsies are typically conducted by forensic experts to determine the cause of death. After all the analytical results are obtained, the forensic expert will draw conclusions whether the deceased died due to an accident, illness, or other reasons. The autopsy involves a lengthy examination process, starting with a chest examination, surgery, identification of trauma, wounds, and bleeding, followed by a detailed examination of each organ.

Regarding death cases, forensic autopsy is the basis making conclusions in post mortem et repertum on corpses. Indeed, post mortem et repertum cannot show who the perpetrator of the crime was the victim's death, but the post mortem et repertum has an influence on the imposition of sanctions towards the perpetrator (Lisdayanty, 2019).

The best time to perform an autopsy is within 24 hours as it allows for obtaining a lot of data quickly and easily. If it's done between 24 hours to 20 days after death, the data can still be tracked and analyzed, including microscopic examination of tissues or cells. Autopsies should be conducted as soon as possible, typically within two to three days after someone's death. This is done to prevent the loss of crucial information due to the body decomposition process. Once the autopsy procedure is completed, the next step is to return the organs back into the body of the deceased. All information gathered through the autopsy procedure will be provided within a few days to weeks after.

The legal basis for conducting autopsies is outlined in the Indonesian Criminal Procedure Code (KUHAP). This involves a statement made by a doctor at the request of authorized investigators regarding the results of medical examinations on living or deceased humans, or parts or suspected parts of the human body, based on expertise and under oath for the purpose of court proceedings.

The results of forensic autopsies play a crucial role in proving the criminal act of murder, from the investigation, prosecution, to the trial phase. It can even be said that the results of forensic autopsies have a very significant role in murder cases. However, in practice, forensic autopsies are not always utilized in cases of murder. The lack of a requirement for using forensic autopsies in murder cases seems to be considered as normal and common in Indonesia (Samsudi, 2021).

The main objective in any criminal case is material truth. Material truth refers to a balanced truth between punishment and guilt, where the punishment corresponds to the severity of the evil nature of an act, taking into account various related considerations (Johari, 2020). Therefore, material truth is the truth that must be proven in every criminal case as accurately as possible.

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In uncovering a criminal case, including murder cases, evidence is crucial to unraveling the case. It can be said that investigators and detectives (the police) play a very important role in conducting forensic autopsies in murder cases as evidence. Evidence in criminal cases is a vital part of the examination process, even serving as a vital determinant in decision-making regarding a case being processed, from the investigation stage to the examination of evidence in court. Evidence will also be the main factor in determining the criminal offense that will be charged (Ashari, 2017). Subsequently, investigators will present the case file to the prosecutor.

Based on an interview with Inspector Subari S.H. from the West Jakarta Metropolitan Police, he stated that forensic autopsies are crucial in the legal realm because they serve as evidence during court proceedings. Without forensic autopsies, how can judges make decisions on cases? Investigators can request expert testimony for the purpose of investigating a criminal case. In cases of murder, determining the cause of death definitely requires expert testimony, including testimony from doctors. Doctors in murder cases can serve as witnesses, experts, or expert witnesses (Aflanie, 2017). In conducting autopsies, investigators must coordinate with medical teams and the families of victims to determine the type of examination needed. Thus, the role of the police as investigators is vital in the execution of forensic autopsies, which will be crucial evidence in court.

Based on interviews with Mr. Ibnu Suud S.H., a prosecutor from the High Prosecutors Office of Jakarta, he stated that forensic autopsies play a crucial role as they are considered evidence for judges to consider when making decisions in cases. The forensic autopsy report is recognized as valid evidence.

Additionally, based on interviews with Professor Dr. Oksidelfa Yanto, S.H., M.H., an academic, he emphasized the importance of documentary evidence such as *visum et repertum*, especially in cases involving forensic autopsies. These documents are highly needed and significant in court proceedings.

## 2. Forensic Autopsy Rejected by Victim's Family Based on Article 222 of the Indonesian Penal Code (KUHP) in Conjunction with Articles 133-134 of the Indonesian Criminal Procedure Code (KUHAP).

Criminal law policy essentially aims to realize criminal legislation to be in accordance with the circumstances at a given time (*ius constitutum*) and in the future (*ius constituendum*) (Sambas, 2022). Unnatural death is one of the criminal cases that must be resolved for law enforcement. Resolving criminal cases involving death is often hindered by a lack of information about the cause, manner, and mechanism of death, whether the death occurred naturally or unnaturally. Therefore, it is necessary to specifically examine the cause, manner, and mechanism of death. Based on the principles of Forensic Medicine, if one wants to determine the cause of death of an individual, an autopsy is absolutely necessary, especially in cases of unnatural death.

An autopsy is a post-mortem examination of a body to determine the cause of death. Its primary function is to assist in resolving criminal cases, particularly murder cases, as it deals with the human body, health, and life. Information about autopsy results is crucial in seeking clarity and material truth about a crime or offense that has occurred, especially in cases of murder. Therefore, forensic medicine is highly necessary in these investigations.

An autopsy must be conducted objectively by gathering facts and logically connecting them to draw conclusions. Therefore, when providing a report on autopsy findings, it must be as genuine and objective as possible regarding what was observed and discovered during the examination. Hence, autopsy results serve as written testimony. The autopsy results replace the events that occurred and should fully substitute the evidence that has been examined by including all facts, thus leading to a precise conclusion.

Moreover, autopsy results may also be used as a document that can be questioned by other doctors about the evidence that was examined if the concerned parties (prosecutors, judges) do not agree with the examination results. Therefore, autopsies are crucial in proving a case because they entirely replace the *Corpus Delicti* (evidence). As known, in a criminal case involving harm to the body, health, or loss of life, the victim's body is the *Corpus Delicti*. Hence, such *Corpus Delicti* cannot be presented or submitted to court, and it must be replaced by the autopsy results, *Visum et Repertum*. The role of a doctor in handling crime victims by issuing autopsy results should be recognized and ensured for its neutrality, as the expertise of doctors significantly contributes to determining the truth.

In cases of unnatural deaths suspected to be caused by criminal events, forensic autopsies typically begin during the investigation process by the Indonesian National Police (Polri) investigators. The benefits of forensic autopsies in cases of suspected unnatural deaths play a crucial role for investigators in deciding whether to continue or halt the investigation process. It can be said that forensic autopsies are actually the primary tool for investigators to either proceed or terminate the investigation and subsequent proceedings regarding unnatural deaths.

The results of forensic autopsy examinations are documented in a report known as "visum et repertum." However, the Indonesian Code of Criminal Procedure (KUHAP) does not specifically mention the term "visum et repertum" as a valid piece of evidence. The term "visum et repertum" is defined in *Staatsblad* Year 1937 Number 350 regarding *Visa Reperta*. *Visum et repertum* is a singular form of *Visa Reperta*, which can be loosely translated as a report based on witnessing or acknowledging having seen something.

Regarding *Staatsblad* Year 1937 Number 350, in essence, the *visum et repertum* from a doctor holds evidential value limited to what the doctor saw or found during the examination of the

victim, or the doctor is considered to only provide eyewitness testimony. The *visum et repertum* is deemed valid when issued by a doctor who has taken an oath of office as a medical professional.

The issuance of the Chief of the Indonesian National Police Instruction in 1975 was motivated by the lack of uniformity in procedures for obtaining *visum et repertum*. In terms of substance, there are several aspects of the 1975 Chief of Police Instruction related to the creation of *visum et repertum* referred to by the Indonesian Code of Criminal Procedure (KUHAP), particularly Article 133 paragraph (1), which states that when investigators handle a victim with injuries, poisoning, or suspected death due to a criminal event, they are authorized to request expert testimony from forensic medicine experts, doctors, or other experts; and paragraph (2) specifies that requests for expert testimony must be made in writing, clearly indicating the purpose for examination, whether for injury examination, post-mortem examination, or autopsy examination.

Regarding the examination of a corpse, Article 133 paragraph (3) specifies that a corpse required for forensic examination must be treated with due respect and labeled appropriately, including containing the identity of the deceased. Furthermore, Article 134 paragraph (1) stipulates that if an autopsy cannot be avoided, it is the duty of the investigator to inform the victim's family in advance; and paragraph (2) mandates that if the family objects to the autopsy, the investigator must explain the purpose and necessity of the autopsy; paragraph (3) states that if there is no response from the family or relevant parties within two days, the investigator must proceed as per the provisions of Article 133 paragraph (3).

Based on Article 133 and Article 134 of the Criminal Procedure Code (KUHAP), the implementation of forensic autopsy depends on whether the victim's family or notified parties agree to it. If there are no family members or notified parties consenting to the forensic autopsy, then the investigator must comply with the provisions of Article 133 paragraph (3), which involves treating the corpse with full respect. Articles 133 and 134 of the KUHAP do not specify further actions regarding the conduct of a forensic autopsy if there is objection from the family. Article 134 paragraph (2) of the KUHAP only mandates the duty of the investigator to clearly explain the purpose and objectives of conducting a forensic autopsy.

Based on the 1975 National Police Chief Instructions, the 2001 Minister of Health Circular, and Articles 133 and 134 of the Criminal Procedure Code (KUHAP), the implementation of forensic autopsies is more procedural and requires prior notification to the victim's family. This means that these regulations do not have binding force as mandatory requirements for the purpose of proving cases of death.

The requirement of notification to the family, coupled with family refusal for forensic autopsy, presents certain weaknesses in specific cases, such as homicide cases within the family where the perpetrator is a family member. Efforts to "cover up" or "protect" the perpetrator of a homicide within the family can be made by refusing to conduct a forensic autopsy on the victim, even after notification and explanation from the investigator regarding the urgency of the forensic autopsy as mandated by Article 134 of the Criminal Procedure Code (KUHAP). With such refusal and the absence of a forensic autopsy, the cause of death remains a mystery that may never be uncovered, giving the perpetrator a chance to escape criminal responsibility.

Regarding forensic autopsies, Article 222 of the Criminal Code (KUHP) threatens criminal sanctions against anyone who intentionally prevents, obstructs, or sabotages a forensic autopsy. Additionally, Article 216 paragraph (1) of the Criminal Code prohibits actions that intentionally disobey the orders or requests of officials tasked with overseeing something or officials empowered by law to investigate criminal acts, as well as anyone who intentionally prevents, obstructs, or sabotages actions taken to enforce legal provisions by one of those officials.

Regarding forensic autopsies, Article 222 of the Criminal Code (KUHP) specifies that anyone, regardless of their familial relationship, is prohibited from preventing, obstructing, or sabotaging a forensic autopsy of a victim whose death is suspected to be related to a criminal event. Additionally, criminal penalties can be imposed on doctors or anyone who refuses the orders or requests of investigators or government officials performing their duties under the law. In this context, the execution of forensic autopsies can be considered a legal mandate.

Based on the provisions of Article 222 of the Criminal Code, the law essentially ensures the implementation of forensic autopsies. Therefore, law enforcement authorities, especially police investigators responsible for every forensic autopsy, can resort to coercive measures if there are threats, challenges, hindrances, or disruptions during the forensic autopsy process.

Based on an interview with Investigator AKP. Subari S.H. from West Jakarta Metro Police, regarding sanctions against the families of victims who refuse forensic autopsies, he stated that to date, such sanctions have never been implemented, even though there are laws governing them. This is because regardless of any objections, forensic autopsies will still be carried out for the sake of establishing material truth.

Based on an interview with Prosecutor Ibnu Suud S.H., he mentioned that regarding the implementation of forensic autopsies, investigators are obligated to clearly inform the victim's family about the procedure, and if the family refuses, the autopsy will still be carried out as required. Regarding sanctions against families who refuse forensic autopsies, he stated that although there are sanctions in the law, in practice, families have not faced these sanctions. There have been no cases where families were imprisoned for refusing forensic autopsies.

Based on an interview with Academician Prof. Dr. Oksidelfa Yanto, S.H., M.H., regarding sanctions against families who refuse forensic autopsies, he mentioned that the sanctions are outlined in Article 216 and Article 222 of the Criminal Code, but so far, he has not seen these sanctions being implemented as they should be.

The enforcement of the law in cases related to unnatural deaths requires ensuring a causal relationship through scientific methods, as mere logic is not sufficient. Determining causality through autopsy is crucial for accuracy and balance in judgments, thus fulfilling justice for victims, perpetrators, and society. The definite conclusion on the cause of death through forensic autopsy serves as material justification that can be scientifically tested to achieve the true purpose of discovering the truth.

The implementation of forensic autopsies facing rejection from the victims' families is quite common, but even in such cases, law enforcement officers continue to carry out their duties as required. There are several factors contributing to families rejecting autopsies for their deceased loved ones:

- a. Religious beliefs: Some families believe that avoiding harm to the deceased's body is part of religious practice. They see performing an autopsy as equivalent to harming their living family members.
- b. Financial and time constraints: Families may perceive autopsies as costly and time-consuming, leading them to refuse permission. They also believe that a deceased person should be buried promptly, and performing an autopsy is seen as a violation of the deceased's dignity.



- c. Respect for the deceased's body: Families may choose not to undergo autopsies as a sign of respect for the deceased's body.
- d. Lack of understanding about the autopsy process: Many people view autopsies as gruesome procedures, leading families to believe they are unnecessary. However, rejecting the autopsy process can potentially lead to legal consequences under Article 222 of the Criminal Procedure Code (KUHAP).

### CONCLUSION

The role of forensic autopsies in cases of unnatural death is an effort to uphold fundamental legal values, namely certainty, utility, and justice, for both the victims and their families, society, and the accused. Conclusively determining the cause of death through forensic autopsies serves as material justification that can be scientifically tested to fulfill the goal of discovering genuine truth.

Despite facing rejection from the victims' families, forensic autopsies, as mandated by Article 222 of the Indonesian Criminal Code in conjunction with Articles 133-134 of the Criminal Procedure Code, must still be carried out as required. If families refuse autopsies, Article 222 of the Criminal Code can be enforced. However, in practice, even with objections from families hindering the autopsy process, Article 222 of the Criminal Code is rarely enforced due to subjective concerns related to humanity.

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