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The Value And Strength Of Evidence Of The Testimonium De Auditu Witness In The Case Of Sexual Abuse Of Children

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Abstract

Disclosure of a criminal case in order to find the perpetrator of a criminal act cannot be separated from witness statements as evidence. Witness testimony that is recognized as evidence is only testimony that meets subjective and objective requirements as a witness. In this regard, problems often arise in practice regarding testimonium de auditu witnesses, related to the strength of their evidence before the trial. For certain criminal acts, finding witnesses who saw, heard and experienced the crime is not easy. For example, criminal acts of sexual abuse against children, which are difficult to find because when a criminal act of sexual abuse occurs, at that time there must be only the perpetrator and the victim. The aim of this research is to determine the value and evidentiary strength of the testimony of testimonium de auditu witnesses in the process of proving criminal acts of child molestation. This problem will be answered using normative legal research methods through case studies of Decision Number: 146/Pid.Sus/2020/PN Ktg. The results of the research in writing this article are that the evidentiary value of all evidence, including witnesses, is in the hands of the judge. Judges in determining the value and proof of evidence must pay attention to its suitability with other evidence.

INTRODUCTION

Various cases and legal issues always arise every day in the implementation of judicial practice in Indonesia. As good citizens we must know our rights and obligations. One of our rights and obligations as citizens is to defend the public interest, one of which is to take part in resolving criminal acts, if the resolution requires witness testimony. According to Darwan Prinst, proof is to prove that a criminal incident has indeed occurred and the defendant is guilty of committing it so he must be held responsible (Meilan Eklesia Gita Tutuhatunewa et al., 2021). Evidence is important in a case examination in court, because this evidence will determine the fate of a defendant. A defendant charged in an indictment is determined whether guilty or not based on the evidentiary process.

According to the provisions of the Criminal Procedure Code, Article 184 paragraph (1) Valid evidence is witness statements, expert statements, letters, instructions and defendant statements. The judge in the trial process must examine the evidentiary strength of each available piece of evidence (Isima, 2022). Witness testimony is the most important form of evidence used and cannot be ignored when handling a crime (Rozi, 2019). The aim of witness testimony is to find out whether a criminal act has actually occurred or not by the defendant. Evidence in criminal cases almost always relies on examining witness statements.

Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) also states that the use of evidence must be based on a hierarchy of evidence, which means that the strength of the evidence is based on its sequence. This means that witness testimony is the main or perfect evidence (Suherman, 2019). However, the judge must still assess the relationship between one piece of evidence and another.

Currently, witness testimony in criminal justice practice is experiencing development along with growing public knowledge in the legal field so that witness testimony is no longer what one sees, hears and experiences for oneself to give testimony. These witnesses are referred to as de auditu witnesses or testimonium de auditu witness statements.

Various cases are often encountered in court where there are no witnesses who saw, heard or experienced it themselves but only heard what happened from the victim. This certainly makes it difficult to provide evidence by the defendant, because these witnesses cannot be used as witnesses according to the Criminal Procedure Code. It is very rare for a case to be caught red-handed, and most cases still involve the testimony of witnesses who hear confessions from victims.

The first time an examination of testimonium de auditu witnesses was carried out was in 1959. The Supreme Court (MA) stipulated Decision Number 308/K/Sip/1959 dated 11 November 1959, which basically stated that testimonium de auditu could not be used as direct evidence, but testimony This can be used as indicative evidence in criminal cases, and as evidence of suspicions in civil cases, where from these instructions or allegations a thing or fact can be proven.

The development of witnesses regulated in the Criminal Procedure Code was then expanded based on the Constitutional Court Decision Number 65/PUU-VII/2010, which states that a witness is defined as a person who can provide information in the context of investigation, prosecution and trial of a criminal act which he or she has not always experienced personally. he saw for himself and he heard for himself.

Basically, the testimony of a testimonium de auditu witness cannot be used as a witness, but due to the broadening of the meaning of the Constitutional Court Decision Number 65/PUU-VII/2010, the testimonium de auditu witness has been used as evidence in trials in Indonesia, one example of a case. The case that uses testimonium de auditu is the case of Decision Number: 146/Pid.Sus/2020/PN Ktg regarding child molestation.

The evidentiary strength of testimonium de auditu witnesses is clearly not the same as that of direct witnesses or fact witnesses in cases, and is also not in accordance with the Criminal Procedure Code so that the use of testimonium de auditu witnesses will make it more difficult for judges to make decisions.

METHODS

Legal research is to find the truth of coherence, namely whether there are legal rules in accordance with legal norms and whether there are norms in the form of orders or prohibitions that are in accordance with legal principles, as well as whether a person's actions are in accordance with legal norms (not just according to legal rules) or legal principles (Marzuki, 2022). The type of legal research used by the author in compiling this research is normative legal research. According to Peter Mahmud Marzuki, the term normative legal research is not necessary because the term legal research or in Dutch called rechtsonderzoek is always normative. Likewise, the term juridical-normative is actually unknown in legal research. This legal research is carried out by reviewing document studies using primary and secondary legal materials such as court decisions, statutory regulations and legal theories.

The type of legal material that the author uses is primary legal material in the form of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), Constitutional Court Decision Number 65/PUU-VIII/2010 concerning Review of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law, Decision Number 146/Pid.Sus/2020/PN Kotamobagu. Secondary legal materials consist of all publications about law that are not official documents. Legal publications include textbooks, legal dictionaries, legal journals, and commentaries on court decisions. The legal material collection technique used in this research is literature study or document study. In this case the researcher uses a case approach so that he must collect court decisions regarding the legal issue being studied

RESULT AND DISCUSSION

In criminal cases, witness testimony is seen as the most important form of evidence, because almost all criminal procedural law examinations refer to witness statements at trial. Likewise, when investigating criminal cases, law enforcement officers always try to obtain witness statements as the most important piece of evidence (Siregar, 2015). Investigators also always prioritize witness statements because they affect the investigation case file because if it is handed over to the prosecutor's office, the prosecutor's office will not accept the file if there is no witness statement (Johnny Lembong & Rompis, 2020).

However, not all witness statements can be used as evidence that has evidentiary value and strength. The following are the requirements that must be met so that witness testimony can be used as evidence, including:

1. Personal Qualities of Witnesses

   The meaning of the witness's personal quality here is in relation to the defendant or litigant. In essence, there is a prohibition on someone being a witness and being able to withdraw from being a witness because of various forms of family relationships, whether blood relationships or relationships by marriage. Apart from this, there are also professions that can ask to be released as witnesses in court. This relates to the obligation to keep official secrets.
2. Related to the things explained by the witness

   In this case, there are two things of concern, namely the substance of the information and the source of the witness's knowledge. Regarding the substance of the statement, the point is that the content of the witness' statement is facts that are related/relevant to the evidence regarding a legal event that is being tried. In the context of a criminal case, what is being testified must of course be related to the occurrence of the criminal act charged, both the elements of the criminal act and the locus and tempus delicti, as well as the fault of the defendant which includes the defendant's mental state before committing the crime, the defendant's will, actions and knowledge. Witness statements must be about facts.

   Therefore, information that expresses opinions or inventions obtained from thoughts is not witness testimony. Then related to the source of the witness's knowledge, when before the trial, the witness must convey the source of the knowledge regarding the information given. This means that the source of knowledge is that the information given by a witness can be obtained because he saw or heard it himself or even experienced it himself. This is important to convey because testimony heard from other people cannot be used as evidence or is known as testimonium de auditu or hearsay.

   Testimonium de auditu can be interpreted as information about facts and things heard, seen or experienced not by the witness himself, but from information conveyed to him by other people regarding facts and things heard,

seen and experienced by other people themselves (Septiningsih et al., 2020). Even though a de auditu testimonium cannot be categorized as a witness statement, as long as the de auditu testimonium is related and in harmony with the facts obtained from other evidence, the de auditu testimonium needs to be considered in order to increase the judge's confidence.

3. Regarding the Reasons Why Witnesses Can Know Their Testimony.
   This means everything that is the cause (rational and acceptable to common sense) for a witness to see, hear or experience the event described by the witness.
4. Obligation of Witnesses to Take an Oath or Promise Before Giving Statement in Front of a Court Session.
   This aims to be able to find the ultimate truth in a legal incident.
5. Regarding the existence of a relationship between the contents of a witness's statement and the contents of the statements of other witnesses or other evidence.

In connection with the principle of unus testis nullus testis, which means that one witness is not a witness. In principle, unus testis nullus testis implies that in determining the truth of a legal event, more than one witness is needed. If there is only one witness, then this testimony must be consistent with other evidence (CHITTA DEWI et al., 2021).

According to the Criminal Procedure Code, the strength of evidence from a witness testimonium de auditu cannot be assessed as evidence. Wirjono Prodjodikoro believes that the ban on testimonium de auditu witnesses is good and appropriate. However, it must be noted that if there are witnesses who testify to having heard a situation occur from someone else, such testimony cannot always be simply excluded. Hearing about an incident from another person may be useful in compiling a chain of evidence against the defendant.

The value of a piece of evidence in criminal procedural law is all of independent value to the judge, as is the testimony of testimonium de auditu. The reason is because the judge is looking for material truth or the most complete truth. So that the assessment of evidence is the testimony of witnesses, experts, letters, instructions, or the defendant's statement is the authority of the judge himself and is not bound by it. It is the judge who assesses and determines the suitability of one piece of evidence with another piece of evidence(Sri Wahyuningsih Yulianti, 2021).

If we look at the facts of the trial from the results of research on Decision Number 146/Pid.Sus/2020/PN Kotamobagu, the judge considers that the witnesses Rusmiati Tumundo, Fitriyanti Tumundo, Imoi Kobandaha, and Susi Susanti Makadomo qualify as testimonium de auditu in this case as far as they are related or relevant will be used as guidance by the panel of judges. The panel of judges in this decision considered that the testimony of the testimonium de auditu witness with the statements of other witnesses and other evidence were related and relevant, even though there were differences. According to the panel of judges, what is meant by this is not that all of the witness statements must be related to each other, there should be no differences at all, because witness statements certainly tell of events that have occurred or have occurred in the past, so the information given depends on the memory of the witnesses, which of course varies. So the linkage referred to by the panel of judges is the linkage to information on fragments of events so that the fragments of events obtained can be compiled and explain the occurrence of an event in its entirety. As stated by witness Fitriyanti Tumundo, who is a testimonium de auditu witness, when she was going to wash the victim's child's clothes, she found that the victim's child's underwear had bloodstains, as in the victim's child's statement, he said that his genitals were bleeding when the defendant rubbed and inserted his finger into the victim's child's genitals. which the defendant then cleaned using a rag. Then this information is also in accordance with evidence in the form of post mortem et repertum Number 445/RSUD-KK/926/2020 dated 9 January 2020 which was made and signed by Dr. Elvina K Ayu SpOG as the doctor who examined the Kotamobagu City Regional Hospital concluded that from the results of the examination the hymen was not intact. Next, Dr. Elvina K Ayu SpOG has provided testimony as an expert, whose statement was read at the trial.

Because the proof of the elements as considered in the research results was based on interrelated evidence, it gave rise to the panel of judges' belief that the defendant Muhamad H. Ilu alias Papa Baim had committed an act of intentionally committing violence against a child to commit obscene acts as in the single indictment and sentenced the defendant to imprisonment for 10 (ten) years and a fine of IDR 200,000,000.00 (two hundred million rupiah) with the provision that if the fine is not paid, it will be replaced by imprisonment for 4 (four) months.

In fact, in this decision the judge could accommodate witness testimony, testimonium de auditu, which could be used as evidence for witness statements, not just indicative evidence because of the Constitutional Court Decision Number 65/PUU-VII/2010 which expands on witness statements. Therefore, the evidentiary value of the testimonium de auditu testimony in Decision Number 146/Pid.Sus/2020/PN Kotamobagu is valuable. Because according to the Criminal Procedure Code it is not valuable, but it is consistent with other evidence and supports the victim. So in Decision Number 146/Pid.Sus/2020/PN Kotamobagu, the judge considered the strength of the testimonium de auditu witness's evidence as valid evidence as a guide. If the testimony of the witness testimonium de auditu is interpreted as a guide, then the strength of the evidence is the same as that specified in the Criminal Procedure Code, namely free and not bound (Jannah, 2018). Because the strength of the evidence depends on the judge whether it is used as indicative evidence or as evidence for witness testimony and is strengthened by the expansion of the meaning of witness testimony in Constitutional Court Decision Number 65/PUU-VII/2010.

CONCLUSION

Based on the results of the research that has been carried out in the discussion regarding the assessment of the value and evidentiary strength of testimonium de auditu testimony in Decision Number 146/Pid.Sus/2020/PN Ktg, it can be concluded that the assessment and evidentiary strength of testimonium de auditu testimony in Decision Number 146/Pid .Sus/2020/PN Kotamobagu is valuable. Even though the Criminal Procedure Code states that testimonium de auditu testimony cannot be used as evidence, due to the correspondence between testimonium de auditu testimony and other evidence, the panel of judges considered that this testimony had evidentiary power to be used as indicative evidence. If the testimony of a witness testimonium de auditu is interpreted as a guide, then the strength of the evidence is the same as that specified in the Criminal Procedure Code, namely free and unbound. The value of a piece of evidence in criminal procedural law is all of independent value to the judge, as is the testimony of testimonium de auditu. The reason is because the judge is looking for material truth or the most complete truth. So that the assessment of evidence is the testimony of witnesses, experts, letters, instructions, or the defendant's statement is the authority of the judge himself and is not bound by it. It is the judge who assesses and determines the suitability of one piece of evidence with another piece of evidence.

BIBLIOGRAPHY

CHITTA DEWI, N. M. Y., Laksmi Dewi, A. A. S., & Suryani, L. P. (2021). Asas Unus Testis Nullus Testis dalam Tindak Pidana Pemerkosaan Anak. *Jurnal Konstruksi Hukum*, *2*(1). https://doi.org/10.22225/jkh.2.1.2993.191-195

Isima, N. (2022). KEDUDUKAN ALAT BUKTI ELEKTRONIK DALAM PEMBUKTIAN PERKARA PIDANA. *Gorontalo Law Review*, *5*(1).

Jannah, I. M. (2018). PERLUASAN KETERANGAN SAKSI TESTIMONIUM DE AUDITU DALAM PEMBUKTIAN PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 65/PUU-VIII/2010 (Studi Putusan Mahkamah Agung Nomor 737 K/Pid/2014). *Kumpulan Jurnal Mahasiswa Fakultas Hukum, Sarjana Ilmu Hukum, Agustus 2018*.

Johnny Lembong, & Rompis, T. (2020). Persoalan Prapenuntutan Dalam Perkara Pidana Menurut Kuhap. *Lex Crimen*, *IX*(3).

Marzuki, P. M. (2022). Penelitian Hukum, cetakan ke-11. *Jurnal Pembangunan Hukum Indonesia*, *4*(2).

Meilan Eklesia Gita Tutuhatunewa, Olga A. Pangkerego, & Dientje Rumimpunu. (2021). PEMBUKTIAN DALAM ACARA PEMERIKSAAN BIASA DAN CEPAT PERKARA DISIDANG PENGADILAN. *Lex Privatum*, *IX*(12).

Rozi, F. (2019). SISTEM PEMBUKTIAN DALAM PROSES PERSIDANGAN PADA PERKARA TINDAK PIDANA. *JURNAL YURIDIS UNAJA*, *1*(2). https://doi.org/10.35141/jyu.v1i2.486

Septiningsih, I., Kurniawan, I. D., & Putranto, M. A. D. (2020). Juridical Testimony Testimonium De Auditu And Unus Testis Nullus Testis In The Disclosure Of Criminal Offenses To Children. *Veteran Justice Journal*, *2*(1). https://doi.org/10.33005/vjj.v2i1.29

Siregar, R. M. D. (2015). Legalitas Keterangan Saksi melalui Teleconference sebagai Alat Bukti dalam Perkara Pidana. *Jurnal Jurisprudensi, Vol. 5 No. 1*.

Sri Wahyuningsih Yulianti, E. S. D. &. (2021). TELAAH NILAI PEMBUKTIAN DAN KEKUATAN PEMBUKTIAN ATAS PERLUASAN KETERANGAN SAKSI TESTIMONIUM DE AUDITU. *Verstek*, *9*(2). https://doi.org/10.20961/jv.v9i2.51071

Suherman, A. (2019). Implementasi Independensi Hakim dalam Pelaksanaan Kekuasaan Kehakiman. *SIGn Jurnal Hukum*, *1*(1). https://doi.org/10.37276/sjh.v1i1.29