

THE POWER OF EVIDENCE OF WITNESS TESTIMONY OBTAINED FROM CHILD VICTIMS UNDER 15 (FIFTEEN) YEARS OF AGE IN CRIME AGAINST CIVIL ACTIONS

Trisna Gamayanti Ma'na

Master of Law Program, Universitas Brawijaya PSDKU Jakarta

E-mail: trisnagamayantimana@gmail.com

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Abstract

One of the pieces of evidence in criminal cases is testimony based on things heard, seen and experienced by the witness directly related to the crime that occurred. Testimony is given by a person who is legally considered an adult and meets the qualifications as a valid witness as regulated in Law Number 8 of 1981. This condition does not cause obstacles in the process of proving a crime, but sometimes a crime or criminal event is only witnessed by a child, especially if the child is under 15 (fifteen years old) who is the victim of the crime. If we look at the provisions contained in Article 171 letter (a) of Law Number 8 of 1981, a child who witnesses by seeing, hearing and/or experiencing the crime himself by stating the reasons based on their knowledge can give testimony without being sworn in. Therefore, it is permitted to obtain information from child witnesses. However, the position of witness information obtained from child victims of crimes against morality which is basically not sworn in could result in the defendant of the crime against morality arguing in court that the crime allegedly committed by the defendant was done on the basis of mutual consent and not by coercion. This certainly needs to be carefully examined by the judge in the process of proof in order to assess the evidence as a consideration for the judge in sentencing decision. When resolving a case, it is necessary to pay attention to the evidence against child witnesses in the criminal justice process, this situation will make the child again face the perpetrator who does not rule out the possibility of suppressing the child's psyche and will affect the child's psychology and also especially the child's testimony in court which in the end the child's testimony will influence the judge's considerations when making a decision on the case. Based on the description above, it can be concluded that although the evidence in the form of witness statements obtained from child victims of crimes against morality can be heard in court, to determine the evidentiary strength of the evidence, it is necessary to examine the position of the child witness's statement as evidence in court as stipulated in statutory regulations.

Keywords: *child witness, evidence, criminal offense against morality*

INTRODUCTION

Children are an integral part of human existence and the stability of a nation. Every child deserves the broadest possible opportunities to develop optimally, both physically and psychologically, and socially. Therefore, they can contribute to the sustainability of future generations. Therefore, protective measures are necessary to achieve prosperity for children by ensuring that the rights of individuals of all ages are fairly fulfilled. The process of handling a criminal case, starting with the investigation, inquiry, and prosecution, is the structure of criminal law implementation aimed at uncovering the facts of a crime. Evidence in court involves witness testimony. Evidence in courtrooms consists of testimony provided by individuals with knowledge of an incident.¹Based on Article 184 of Law Number 8 of 1981 concerning Criminal Procedure Law or what is known as the Criminal Procedure Code, there are several types of evidence that can be accepted as valid, namely: "1) Witness statements; 2) Expert statements; 3)

¹Mamay Komariah, Legal Protection for Witnesses and Victims by the Witness and Victim Protection Agency (LPSK), Volume 3, Number 2, p. 231.

Letters; 4) Instructions; 5) Defendant's statements"² Based on Article 59 Paragraph (1) of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (abbreviated as Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection) it is stipulated that the government, regional governments and other state institutions also have obligations and responsibilities in terms of providing special protection to children, furthermore in Article 64 of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection it is stipulated that special protection for children in conflict with the law is carried out by means of humane treatment that takes into account needs according to their age and separation from adults.

The Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was also established because children are a mandate and a gift from God Almighty, children also have dignity and honor then to maintain their dignity and honor, children have the right to receive special protection, especially protection in the justice system. The Republic of Indonesia is also a party to the Convention on the Rights of the Child which regulates the principles of legal protection that must be given to children, thus Indonesia has an obligation to provide special protection to children who are in conflict with the law that prioritizes and emphasizes the best interests of child protection for the welfare of children by considering and adapting to the conditions or social conditions of society. Law of the Republic of Indonesia Number 11 of 2012 concerning the Criminal Justice System in general provisions, specifically in Article 1 number 5, states that children who become witnesses to criminal acts, hereinafter referred to as child witnesses, are children who are under 18 (eighteen) years of age who provide information for the purposes of investigation, prosecution and examination in court regarding a criminal case that they have heard, seen and/or experienced themselves.

Sexual violence against children is a serious crime that has increased over time and threatens and endangers the lives of children, damages their personal lives and development, and disrupts the sense of peace, tranquility, security, and order within society. Essentially, children will never allow crimes against morality to be committed against them. Because children have physical and emotional limitations to resist perpetrators, children are often lied to or deceived by irresponsible people and forced by situations beyond their control, such as family economic circumstances or the impact of societal conditions, including peer pressure that can force children invisibly, but nevertheless these children are victims. Crimes against morality against children are continuously committed by irresponsible people, and the areas of crime are increasingly widespread, or it can be said that crimes are occurring everywhere. Witnesses who heard, saw, and experienced the event directly, the strength of their evidence is assessed from three benchmarks.

The first aspect is subjectivity, namely when the witness is under oath in providing information in court. If the witness is not under oath to provide information only as information that can strengthen the judge's belief as explained in Article 161 paragraph (2) of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law. The second aspect is strong material or substance, namely if the information that has been given by the witness is in accordance with the statements of other witnesses or other evidence, also the logic of the witness's statement is a condition for the substance of the strength of the statement given by the witness. The third aspect is the assessment of the strength of the witness's evidence, namely from the mechanism in providing information, including the lifestyle and morality of the witness and everything that in general can influence whether or not the statement can be believed. Based on the description of the background that has been compiled above, in this research the problem formulation can be drawn up: How is the regulation of the evidentiary power of witness testimony obtained from child victims of criminal acts against morality?

LITERATURE REVIEW

Witness testimony from children, particularly those under the age of 15 (fifteen), has unique characteristics that distinguish it from the testimony of adult witnesses. Children's cognitive and emotional development affects their ability to remember, retell events, and understand the consequences of their statements. Factors such as age, developmental level, traumatic experiences, and the quality of the relationship with the perpetrator can affect a child's capacity to provide credible testimony. Children may have a limited understanding of time and the sequence of events, and may have difficulty expressing themselves verbally.

²Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure. Supplement to the State Gazette of the Republic of Indonesia 1981 Number 3209

According to Eddy OS Hiariej, there are two words that convey the meaning of "evidence" in English: "evidence" and "proof." These two words have fundamental differences in meaning. Evidence refers to a collection of information supporting a belief that some or all of the facts are true, while proof refers to the results of an evaluation process.³ Lilik Mulyadi is of the view that basically the matter of evidence is regulated as stated in Article 184 Paragraph (1) of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law. Therefore, if examined globally, in the process of obtaining material truth in a criminal case, evidence plays an important role and is of a determining nature, so that theoretically and practically, evidence must be assessed carefully in order to achieve true truth that also does not ignore the defendant's human rights.⁴ The strength and quality of the evidence provided by child victim witnesses is crucial because the Proof Act is a set of provisions that outline and guide the legally permitted methods for proving the guilt of the accused. The Proof Act also regulates the means of evidence that are permitted by law and may be used by the judge to prove the guilt of the accused.⁵

Normatively, children who become witnesses in criminal acts based on Article 1 Number 5 of the Republic of Indonesia Law Number 11 of 2012 concerning the Child Criminal Justice System, namely children who become witnesses in criminal acts who are referred to as child witnesses are children who have not reached the age of 18 (eighteen) years who can provide information for the purposes of investigation, prosecution, and examination in court regarding a criminal case that was heard, seen, and/or experienced by the child himself. The quality of witness testimony in criminal cases involving minors, whether as witnesses or victims, is often questioned. This doubt arises because children are still developing and have immature or complex thought patterns, making it difficult for them to fully convey the events they experienced, especially in cases of child sexual intercourse. Although child victims cannot be sworn in when giving testimony in court, their statements can still be valid evidence. This applies if the child's statement is consistent with or supported by statements from other witnesses, thus becoming strong, valid evidence.⁶ There are several studies on the evidentiary power of children's testimony, namely Muhammad Hazami (2024) who compared the evidentiary power of children's testimony in the criminal justice system (Comparative Study of Decisions No. 36 / Pid.Sus / 2023 / PN.LBB. and No. 492 / Pid.Sus / 2023 / PN.Jkt.Brt.), Miftahul Jannah (2021) who analyzed the special protection law for children who are victims of economic and sexual exploitation, and Alif Darmawan Maruszama, SH (2016) who studied Legal Protection for Children as Witnesses in Criminal Cases in the Juvenile Criminal Justice System.

METHOD

This research uses a type of normative legal research or normative juridical research which is carried out by collecting various data from various sources.⁷ This research is primarily conducted on secondary legal materials, therefore utilizing normative legal research. Normative legal research is legal research conducted by examining secondary data, including data from primary legal materials. The normative legal research method is also called doctrinal legal research. In this type of legal research, law, as written or contained in statutory regulations or laws, is conceptualized as a rule that serves as a basis or guideline for human behavior deemed appropriate. This research utilizes both primary and secondary legal materials.⁸ This research will examine, trace and analyze the evidentiary strength of witness statements obtained from child victims of crimes against morality. The research approach used by the author is a statutory approach (statute approach) related to the legislation related to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which has been amended by Law of the Republic of Indonesia Number 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law, Law of the Republic of Indonesia Number 11 of 2012 concerning the Child Criminal Justice System, Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims as amended by Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006

³Eddy OS Hiariej (2012), *Theory and Law of Evidence*, Jakarta: Erlangga, p. 2

⁴Lilik Mulyadi (2007), *Normative, Theoretical, Practical and Problematic Criminal Procedure Law*, Bandung: PT. Alumni, p. 99.

⁵M Yahya Harahap (1988), *Discussion of Problems and Application of the Criminal Procedure Code Volume I*, Jakarta: Pustaka Kartini

⁶Muhammad Aulia Farhan, Beniharmoni Harefa (2022), "The quality of evidence of child victim witness statements in criminal acts of sexual intercourse by children", *Journal of Law and Humanities*, Vol. 9 No. 1, p. 40

⁷Soerjono Soekanto and Sri Mamudji (2006), *Normative Legal Research: A Brief Review*, Jakarta: RajaGrafindo Persada, p. 23.

⁸Amiruddin and Zainal Asikin (2006), *Introduction to Legal Research Methods*. Jakarta: Rajawali Press, p. 118.

concerning Protection of Witnesses and Victims, Law of the Republic of Indonesia Number 12 of 2022 Concerning Criminal Acts of Sexual Violence, and Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law.

RESULTS AND DISCUSSION

A. General Study of Children as Witnesses

Article 171 letter a of Law Number 8 of 1981 states that children who have not reached the age of 15 (fifteen) years and are not married may provide information without being sworn in.

Children who become witnesses in criminal acts based on Article 1 Number 5 of the Republic of Indonesia Law Number 11 of 2012 concerning the Child Criminal Justice System, namely Children who become witnesses to criminal acts referred to as child witnesses are children who have not reached the age of 18 (eighteen) years who can provide information for the benefit of investigations, prosecutions, and examinations in court regarding a criminal case that was heard, seen, and/or experienced by the child himself. Judges, Public Prosecutors, Advocates, Professional Social Workers, Community Guidance and Social Welfare Workers, in handling cases where the evidence includes witness statements from child witnesses and/or child victims, are required to pay attention to the best interests of the child and strive to maintain a family atmosphere. The identity of child witnesses and/or victims must also be kept confidential in news reports in both print and electronic media. In the examination of child witnesses who provide testimony in criminal trials, the Judge, Public Prosecutor, Investigator, Advocate, Child witnesses and/or child victims, Community Guidance Officer, do not wear a toga or official attributes. At every level of examination, they have the right to be accompanied by parents or people trusted by the child witnesses and/or child victims. According to Article 90 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Child Criminal Justice System, it is stated that child witnesses and/or victims also have the following rights: a) medical rehabilitation and social rehabilitation efforts b) guarantees of safety, both physical, mental, and social; and c) ease in obtaining information regarding the progress of the case. In addition, child witnesses and/or child victims who need protection can obtain protection from institutions that play a role in handling witness and victim protection or social shelters in accordance with the provisions of laws and regulations.

The Child Criminal Justice System Law also regulates special provisions for witnesses/victims who are unable to appear to testify in court for any reason. The judge may order that the child witness testify outside the courtroom through electronic recording conducted by a local community advisor, in the presence of the investigator or public prosecutor, and an advocate or other legal aid provider who is participating in the examination of the case. The child witness or victim's testimony may also be heard through a remote examination with the assistance of audiovisual communication devices and the child remains accompanied. This is in line with what has been regulated in Article 52 of the Law on Sexual Violence Crimes which states that in the case of a witness and/or victim of a sexual violence crime being a child, the investigator may conduct electronic recording or direct remote examination using audiovisual communication devices, with or without the consent of the parent or guardian, and while still taking into account the best interests of the child. The definition of a witness is also contained in the Republic of Indonesia Law Number 13 of 2006 concerning Protection of Witnesses and Victims as amended by the Republic of Indonesia Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, that a witness is a person who can provide information for the purposes of investigation, inquiry, prosecution, and examination in court regarding a criminal case that he himself heard, saw, and/or experienced himself. The Law on Protection of Witnesses and Victims also applies to child witnesses because it has been emphasized in the Explanation of Article 87 paragraph (2) of the Law on the Child Criminal Justice System that what is meant by "provisions of laws and regulations" includes the Law on Child Protection, the Law on Protection of Witnesses and Victims, the Law on Domestic Violence, and the Law on Eradication of the Crime of Human Trafficking. Therefore, the application of the Law on Protection of Witnesses and Victims also applies to child witnesses.

B. Regulations on the Power of Evidence of Child Witness Statements Who Are Victims Under the Age of (fifteen) year of Criminal Offenses Against Morality

Evidence in criminal procedure law serves as the basis for the judge to decide whether the defendant is guilty of the prosecutor's charges or not. The law of evidence itself is a branch of criminal procedure law that regulates various aspects, including the types of evidence that are valid according to law, the system used in the evidentiary

process, the requirements and procedures for submitting such evidence, and the judge's authority to accept, reject, and evaluate each piece of evidence submitted. Children are often victims of sexual violence. The types of sexual violence against children include sexual intercourse with children, indecent acts against children, and/or sexual exploitation of children, pornography involving children or pornography that explicitly contains violence and sexual exploitation as regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Child protection is a shared responsibility involving five main pillars: parents, families, communities, governments (central and regional), and the state. These five elements are interconnected and work together to implement comprehensive child protection.⁹ Children testifying in criminal trials desperately need safety guarantees. Given that their testimony can benefit the victim or harm the perpetrator, there is the potential for threats from those who feel aggrieved. Therefore, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) specifically provides space to ensure the safety of children when testifying in court. Valid evidence in criminal cases as stated in Article 184 of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law, includes 1) Witness testimony; 2) Expert testimony; 3) Letters; 4) Instructions; 5) Defendant's statement. Furthermore, Article 171 of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law states that children who are under fifteen years of age and have never been married may be examined to provide testimony without taking an oath.

Based on Constitutional Court Decision Number 65/PUU-VIII/2010, the definition of witness and witness testimony has been broadened. Now, a witness does not always have to be someone who directly heard, saw, or experienced a criminal event. Witness testimony is now defined as information regarding a criminal event that the witness heard, saw, or experienced personally, stating the reasons for their knowledge. This expansion also includes testimony provided during the investigation, prosecution, and trial process from people who did not always hear, see, or directly experience the criminal event.¹⁰ A witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a case of sexual violence that he/she heard, saw and experienced, including a person who can provide information related to a case of sexual violence even though he/she did not hear it himself/herself, did not see it himself/herself, and did not experience it himself/herself as long as the person's information is related to the Crime of Sexual Violence as stipulated in the Law on Sexual Violence Crimes.¹¹ There are several things that must be taken into account by the judge in assessing the truth of a witness's statement as stated in Article 185 paragraph (6) of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law, namely as follows:

- a. correspondence between one witness's statement and another;
- b. correspondence between witness statements and other evidence;
- c. reasons that may be used by a witness to give certain information;
- d. the witness's lifestyle and morals and everything that can generally influence whether or not the statement can be believed;

Furthermore, in paragraph (7) there is an exception to the testimony of witnesses who are not sworn in, even though their testimony is in accordance with one another, it does not become evidence. However, if the testimony is in accordance with the testimony of a sworn witness, it can be used as additional valid evidence. However, to understand the testimony of witnesses, it is also necessary to pay attention to the explanation of Article 171 of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law that children who are not yet fifteen years old, as well as people who are mentally ill, mentally ill, insane even if only occasionally, which in the science of mental illness is called psychopaths, they cannot be held fully responsible in criminal law, so they cannot be sworn in or made a promise in giving testimony, therefore their testimony is only used as a guide. Thus, referring to the indicative evidence as stated in Article 188 of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law, an Indication is an act, event or condition, which due to its correspondence, either between one and the other, or with the crime itself, indicates that a crime has occurred and who the perpetrator is, this indicative evidence can only be obtained from witness statements, letters and statements from

⁹Rini Fitriani., "The Role of Child Protection Organizers in Protecting and Fulfilling Children's Rights" Samudera Keadilan Law Journal Vol.11 No.2 (2016), Faculty of Law, Samudera University

¹⁰Akbar, MF (2019). The Influence of Constitutional Court Decisions in the Field of Judicial Review of Laws on the Indonesian Criminal Justice System with Amendments to the Criminal Procedure Code. Constitutional Journal, 16(3), 466-487.

¹¹Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Supplement to the State Gazette of the Republic of Indonesia Number 6792

the defendant, which the judge will then assess the evidentiary strength of the indicative in certain circumstances wisely and judiciously after examining it carefully and thoroughly based on his conscience.

CONCLUSION

Child witnesses in criminal cases, especially those under 18 (eighteen) years of age, are entitled to special status and treatment in the Indonesian criminal justice system, as stipulated in various laws and regulations. Although children under 15 (fifteen) years of age can provide testimony without being sworn in, their testimony can serve as indicative evidence. The Juvenile Criminal Justice System Law specifically defines child witnesses and emphasizes that all law enforcement officers are required to prioritize the best interests of children and create a family atmosphere during the legal process. The identity of child witnesses cannot be made public. The Indonesian criminal justice system provides special treatment and comprehensive protection for child witnesses to crimes. Although children under 15 are not sworn in, their testimony remains valuable in the legal process. Law enforcement officials, from investigators to judges, are obliged to prioritize the best interests of children and create a friendly and family-like atmosphere during the examination process.

The rights of child witnesses extend beyond protection during the legal process. They also have the right to assistance from parents or trusted individuals at every stage of the examination, and have fundamental rights such as medical and social rehabilitation, security, and easy access to information regarding the progress of their case. To ensure that children's testimony can be obtained optimally and without causing trauma, the law also regulates specific mechanisms. If a child witness or victim is unable to attend the trial, their testimony can be taken outside the trial through electronic recording by a community counselor, or through remote examination using audiovisual communication devices, while still being accompanied. This provision aligns with the Law on Sexual Violence Crimes, which allows for remote recording or examination of children, even without parental/guardian consent, to ensure the child's best interests. Therefore, although the definition of a witness in the Witness and Victim Protection Law applies generally, child witnesses still have a strong and multi-layered legal framework to ensure their rights are met at every stage of the trial.

Evidence in criminal procedure law serves as the main foundation for determining whether the defendant is legally and convincingly proven guilty as charged. The judge has the authority to assess every piece of evidence presented in court. Valid evidence according to the Criminal Procedure Law includes witness statements, expert statements, letters, clues, and the defendant's statement. In assessing the evidentiary strength of witness statements, the judge must pay attention to several important factors in accordance with Article 185 paragraph (6) of the Criminal Procedure Law, such as the consistency between witness statements, consistency with other pieces of evidence, the reasons for giving the statement, and the witness's lifestyle and morality. Although unsworn witness statements (including those from children under the age of fifteen) do not directly constitute valid evidence, they can become clues if they are consistent with other pieces of evidence. The judge has the authority to assess these clues wisely and carefully based on conscience, ensuring that every clue obtained from witness statements, letters, or the defendant's statement truly proves whether or not a crime has occurred.

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