

The Power of Evidence of Witness Testimony in the Trial Process of Criminal Molestation Cases

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Abstract. *The purpose of this research is to determine the strength of the evidence of witness testimony in the trial of a criminal act of indecency. To determine the strength of providing legal protection for witnesses in the trial of a criminal act of indecency. The method used by the researcher is normative legal approach & the specifications in this study include descriptive analysis. The sources and types of secondary data were obtained from literature studies. Based on the results of the study, the evidentiary power of witness statements in a trial of a criminal act of indecency depends on several factors, including: conformity with other evidence: The witness's statement must be consistent with other valid evidence. Conformity with the statements of other witnesses: The witness's statement must be consistent with the statements of other witnesses. The witness's reasons for giving a statement: The judge considers the witness's reasons for giving a particular statement. The witness's lifestyle and morality: The judge considers the witness's lifestyle and morality. The witness's obligation to take an oath: The witness is required to take an oath or promise before giving a statement in court. The Power to Provide Legal Protection for Witnesses in Trials of Criminal Acts of Indecency has not been implemented optimally, this is because there are still children's rights that have not been obtained by children who are victims of criminal acts of indecency, namely the right to receive rehabilitation, rehabilitation both psychologically, physically and spiritually, even though this is regulated in the provisions of the Child Criminal Justice System Law, namely in Article 90 paragraph (1) which states that in addition to the rights that have been regulated in the provisions of laws and regulations as referred to in Article 89, Child Victims and Child Witnesses have the right to medical rehabilitation and social rehabilitation efforts, both within and outside the institution. However, this right is not obtained by child victims of criminal acts of indecency.*

Keywords: *Criminal; Evidence; Molestation; Statement.*

1. Introduction

Criminal acts can occur anywhere and to anyone including women and children. This is because women and children are included in vulnerable groups who can experience criminal acts or unpleasant actions. Therefore, a provision of legislation is needed that specifically regulates the protection and enforcement of the law against violations of the rights of women and children so that they do not become victims of a crime.

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Protection includes the rights of citizens, Indonesia does not look at a certain age to protect its citizens. For example, in Article 28B paragraph (2) protection of children contained in the 1945 Constitution which reads: "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination". In Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in the section considering in point b it is explained that this law exists because it is mandated in the 1945 Constitution of the Republic of Indonesia. In Article 1 paragraph 15a of Law Number 35 of 2014 concerning Child Protection, which reads "Violence is any act against a child that results in physical, psychological, sexual misery or suffering, and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty." In its current development, there are criminal acts of morality.

Criminal acts of indecency are acts that violate moral norms related to sexuality. This crime is included as a complaint offense, where a victim's complaint is needed as a basis for the authorities to act for law enforcement. Law enforcement in the process begins with investigations, arrests, and detentions carried out by the police. Prosecution is carried out by the prosecutor's office, then an examination is carried out in court and a court decision is made by the judge. Then the court decision is implemented in the Correctional Institution or commonly known as LP.¹Moral crimes are regulated in Articles 281 to 303 of the Criminal Code (KUHP) Book II. One form of moral crime is molestation.²Molestation according to Moeljatno is any heinous act or violation of morality related to sexual desire. In this definition, Moeljatno emphasizes more on acts based on sexual desire.³

Children as victims or witnesses of a crime are regulated in Article 1 number 4 and Article 1 number 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law). According to Article 1 number 5 of the SPPA Law, it is explained that "a child who becomes a witness to a crime, hereinafter referred to as a Child Witness, is a child who is under 18 (eighteen) years of age who can provide information for the purposes of investigation, prosecution, and examination in court regarding a criminal case that he/she has heard, seen, and/or experienced himself/herself". Meanwhile, a child who becomes a victim of a crime or can be referred to as a Child Victim according to Article 1 number 4 of the SPPA Law is "a child who is under 18 (eighteen) years of age who experiences physical, mental, and/or economic suffering caused by a crime".

In the current crime that befell children can happen anywhere, done by anyone and can be done by the child's biological parents. That children who should receive special love and protection from parents, family, society and the state, but often become victims of physical and sexual violence because they are considered weak and helpless creatures who still depend on anyone.⁴Children often become victims of sexual crimes, in this case the

¹Olivia Anggie Johar, Miftahul Haq, 2021, "Law Enforcement Against Child Molestation Crimes by the Bengkalis District Attorney's Office", Journal of Legal Ideas Vol. 03 No. 02, Faculty of Law, Lancang Kuning University.

²Mudzakkir, 2014, "Final Report on Writing a Scientific Paper on Analysis of the Legal Handling Mechanism for Criminal Acts Against Morality.", Ministry of Law and Human Rights of the Republic of Indonesia.

³I Gusti Ngurah Agung Sweca Brahmanta et al., 2021, "Legal Review of Criminal Acts of Child Molestation", Journal of Legal Analogy, Vol.3 No.3, pp. 355-362.

⁴Putra Ramadhan Nurshoim et al., 2018, "Criminal Sanctions Against Biological Fathers as Perpetrators of Criminal Acts of Molestation Against Their Minor Biological Children", SLR Journal, Vol.2 (No.4), Faculty of Law, Jenderal Soedirman University, p. 736.

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perpetrator is a very cruel person, who does not think about the negative impacts of actions that are only based on high lust and ultimately expresses this lust through sexual crimes.

One form of crime that always lurks against children is immoral crime. According to Leden Marpaung, the word immoral or "Morality" can be interpreted that "morality has the meaning of good manners, politeness, civility, customs, and order."⁵In the perspective of society, morality is said by Leden Marpaung as a right or wrong behavior, especially in matters related to their sexual events. Meanwhile, according to Barda Nawawi Arief, it is explained that the law views morality as behavior, actions, conversations, even anything that must be protected by the law related to norms of politeness in order to realize morality and order in the social life of society.⁶

Child molestation is one of the crimes that often occurs in the community and family environment, this is a serious problem because the act has violated decency and morality which makes the victim feel very disadvantaged therefore it has a very negative impact on the development of the child and the psychology of the child. In committing molestation, for example, the perpetrator touches the victim's genitals, holds the breasts, and has intercourse based on lust. The crime of molestation is very disturbing to the community, molestation can be classified as a disease in medicine, so in this molestation it is not because of a lack of motivation to be able to recover but because of changes in the mechanism that takes a long time to be able to recover from this disease.⁷

In the judicial system, there is legal uncertainty and potential arbitrariness (potential abuse of power) when judges are given the authority to make decisions based on their own beliefs, even though those beliefs are very strong and sincere. However, it is important to note that the judge's beliefs when making decisions must be based on valid evidence and recognized by law.⁸

Based on the problems above, the objectives of this study are as follows: to determine the strength of the evidence of witness statements in the trial of a criminal act of indecency. To determine the strength of providing legal protection for witnesses in the trial of a criminal act of indecency.

2. Research methods

The problem-solving approach method used in this research is a normative legal approach, namely legal research conducted by examining library materials or secondary data as a basis for research by conducting searches for regulations and literature related to the problems being researched.⁹The nature of the research used in completing this research with a description of the analysis. All data that has been collected, both primary data and secondary data, will be analyzed qualitatively with a normative legal approach, then the data is presented descriptively and then concluded.

⁵Leden Marpaung, 2008, *Crimes Against Morality and the Problem of Prevention*, Sinar Grafika, Jakarta, p. 3.

⁶Barda Nawawi Arief, 2016, *Anthology of Criminal Law Policy*, Kencana, Bandung, p. 45

⁷I Gusti Nurah Agung Sweca Brahmanta, et al., 2021, "Legal Review of Criminal Acts of Child Molestation", *Journal of Legal Analogy*, Volume 3, Number 3, p. 356

⁸Hana Krisnamurti, 2016, "The Position of Child Witnesses in Proving Criminal Cases," *Wacana Paramarta* 15, no. 2: p. 3.

⁹Soerjono Soekanto & Sri Mamudja, 2001, *Normative Legal Research (A Brief Review)*, Rajawali Pers, Jakarta, pp. 13-14

3. Results and Discussion

3.1. The Evidential Power of Witness Testimony in Trials of Criminal Cases of Indecent Acts

The Indonesian Criminal Justice Process is implemented based on Law No. 8 of 1981 concerning Criminal Procedure Law. Criminal procedure law is closely related to the existence of criminal law, therefore it is a series of regulations that contain how government agencies in power, namely the police, prosecutors and courts must act in order to achieve the state's goal of enforcing criminal law. Legal uncertainty (*rechtsonzekerheid*) and arbitrariness (*willekeur*) will arise if judges in carrying out their duties are allowed to make decisions based only on their beliefs, even if they are very strong and very pure.

One form of criminal offense against children is sexual abuse which is regulated in Article 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which stipulates "Everyone is prohibited from committing violence or threats of violence, forcing, committing trickery, telling a series of lies, or persuading children to commit or allow indecent acts to be committed."

Witnesses have a very important role in the trial because witness statements can be used as a basis and reference in strengthening the judge's decision in the trial. "This has the effect that every witness statement always gets great attention both by legal practitioners involved in the trial and by the legal observer community."¹⁰

Witness testimony given by adults who have met the requirements will not be debated, but what if a witness statement is given by a child witness. The testimony of the child witness can have the power of proof and can be used as valid evidence or not. Because based on Article 1 paragraph (5) of Law Number 11 of 2012 concerning the Child Criminal Justice System, it is stated that "a child who becomes a witness to a criminal act, hereinafter referred to as a Child Witness, is a child who is under 18 (eighteen) years of age who can provide information for the purposes of investigation, prosecution, and examination in court regarding a criminal case that he/she heard, saw, and/or experienced himself/herself". This means that the statement of a child who becomes a witness or victim can be used as valid evidence without first taking an oath, but in Article 160 paragraph (3) of the Criminal Procedure Code, a witness statement can be considered valid if it has met the applicable provisions, namely that before giving a statement, a witness must first take an oath or promise.

The trial has various flows that must be passed by the defendant, starting from the reading of the indictment by the public prosecutor to the reading of the verdict by the judge. The trial process is to enforce material law, so that in order to enforce it, a process of proof is needed in the trial. Proof is that a criminal event has occurred and the defendant who is guilty has done it so that he must be held responsible for it.¹¹

In general, the process of proving a crime is regulated in Article 183-189 of Law Number 8 of 1981 concerning Criminal Procedure Law (hereinafter referred to as the Criminal Procedure Code). The proof stage requires the judge to examine valid evidence according to the law before giving a verdict of guilt or innocence of a defendant for a crime. The evidence has

¹⁰Muhadar, Edi Abdullah, Husni Thamrin, 2010, Protection of Witnesses and Victims in the Criminal Justice System, Putra Media Nusantara, Surabaya p.1

¹¹Hendar Soetarna, 2011, Law of Evidence in Criminal Procedure, Alumni. Bandung, pp. 9-10

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been determined in Article 184 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions, and defendant statements. Based on the formulation of witness statements, it can be said that witness statements are very important not only because of the degree of truth and are placed in the first order of other evidence.

The presence of witnesses in court is to provide information related to the case being examined. Every witness is required to provide information that is true and nothing other than the truth in accordance with the oath or promise they have made. A person who will provide information as a witness is a person who is an adult according to the law and has fulfilled the requirements for the validity of a witness's statement as evidence as regulated in the Criminal Procedure Code, so that this does not cause a problem in proving a criminal case, but sometimes a criminal act or crime that is suspected of having occurred is actually witnessed or experienced by a child who is still a minor. This is a polemic because based on Article 160 (3) of the Criminal Procedure Code, there is a provision that witnesses must take an oath to be able to provide information as a witness, but a contradictory situation occurs if the witness is a minor who cannot yet take an oath because his nature is still unstable. This raises the question of whether by not taking an oath against a minor witness, the trial process is considered legally valid or invalid, especially regarding the strength of its evidence.

Saction in a trial is a valid evidence in a trial in court besides two other pieces of evidence, namely expert testimony, letters, instructions, defendant's testimony, testimony from one witness alone is not enough to prove that the defendant is guilty of the act charged to him, but testimony from several witnesses. A witness is a person who can provide information for the purposes of investigation, prosecution and trial of a Criminal Case that he himself heard, saw himself, and experienced himself (Article 1 point 26 of the Criminal Procedure Code).

Seewhereas what is meant by witness testimony is one of the means of evidence in a criminal case in the form of testimony from a witness regarding an event that he himself heard, saw himself and experienced himself by stating the reasons for his knowledge (Article 1 point 27 of the Criminal Procedure Code).¹²

In criminal cases, witness testimony is considered the most important evidence, because almost all criminal procedural law examinations refer to witness testimony in court. Likewise, in conducting criminal case investigations, law enforcement officers always try to obtain witness testimony as the most important evidence.¹³ Investigators also always prioritize witness statements because they have an impact on the investigation case files because if they are submitted to the prosecutor's office, the prosecutor's office will not accept the files if there is no witness statement.¹⁴ However, not all witness statements can be used as valid evidence. According to Ian Dennis, there are at least five things related to

¹²C. Djisman Samosir, 2013, *A Handful of Criminal Procedure Law*, Nuasa Aulia, Bandung. P. 129

¹³Muhadar. 2009, *Protection of Witnesses and Victims in the Criminal Justice System*. Putra Media Nusantara, Surabaya

¹⁴Amrullah Bustamam. 2021, "Rejection of Testimonium De Auditu Witness as Evidence in Aceh Sharia Court Decision Number 7/JN/2021/MS Aceh". *Legitimacy: Journal of Criminal Law and Legal Politics*.

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the validity of a witness statement as evidence, namely:¹⁵

1. Personal Qualities of Witnesses
2. Related to the Matter Explained by the Witness
3. Regarding the Cause of Witnesses
4. Regarding the Relationship between the Contents of Witness Statements and the Contents of Statements of Other Witnesses or Other Evidence.

One of the important things in proving this criminal case of indecent assault is expert testimony, Expert testimony as evidence in all its risks is an important thing to study. Before going further, it is necessary to know the meaning of the terms. According to WJS Poerwadarminta, Evidence is something (events and so on) that is sufficient to show the truth of something (events and so on), Evidence is anything that is a sign of an act (crime and so on).¹⁶

Proving a criminal case in a trial process is essentially aimed at finding the material truth of the case. This can be seen from the various efforts made by law enforcement officers in obtaining the evidence needed to uncover a case both at the preliminary examination stage such as investigation and prosecution and at the trial stage of the case.

The evidentiary power of witness statements in a trial of a criminal case of indecency depends on several factors, including:

1. Consistency with other evidence: Witness testimony must be consistent with other valid evidence.
2. Correspondence with the statements of other witnesses: Witness statements must be in accordance with the statements of other witnesses.
3. Reasons for witnesses to provide information: The judge considers the reasons for witnesses to provide certain information.
4. The witness' way of life and morals: The judge considers the witness's way of life and morals.
5. Obligation of witnesses to take an oath: Witnesses are required to take an oath or promise before providing information in court.

3.2. The Power of Giving Legal Protection for Witnesses in Trials of Criminal Cases of Indecent Acts

Child protection is all activities to provide protection and rights for children so that they can grow, develop and participate optimally in accordance with human dignity and honor and receive protection from all crimes and discrimination.¹⁷The Indonesian government's efforts to protect children's cases by establishing Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.

The Criminal Code (KUHP) actually regulates provisions regarding criminal sanctions against

¹⁵Andi Hamzah. 1986, *Legal Dictionary*. Ghalia Indonesia, Jakarta

¹⁶Bambang Waluyo, 1991, *The System of Evidence in Indonesian Justice*, Sinar Grafika, Jakarta, p. 1.

¹⁷Nur Fitriani, 2019, "Legal Review of the Evidential Strength of Child Witness Testimony in Criminal Trials", <https://ejurnal.ung.ac.id/index.php/JL/article/view/5416>.

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perpetrators of sexual violence, but in reality this crime still occurs in many places and is hidden in society. It is not uncommon for these cases to escape the clutches of applicable law, some even stop at the level of examination by the police or prosecutor's office so that they do not reach the court process. To realize the success of law enforcement in eradicating the rampant cases of sexual violence, it is very necessary to strengthen serious coordination of cooperation between the police, prosecutors and judges in court. The decisions of judges examining cases of sexual violence in various courts vary. There are even cases of child sexual violence that are only sentenced to playing around with a six-month prison sentence. This can be justified because within the maximum and minimum limits (one day to twelve years) the judge is free to get the right sentence).¹⁸

The theory of legal culture explains that law is basically not just a black and white formulation as stated in various forms of legislation, but law should be seen as a phenomenon that can be observed in the life of society through the behavioral patterns of its citizens.¹⁹ In general, it can be said that legal protection includes activities that are direct and indirect from actions that endanger children physically and/or psychologically. In the process of legal protection for child victims of sexual abuse, the principle of justice for children is emphasized. That is, justice in every child's case must reflect a sense of justice for the child. In addition, it is also necessary to consider the best interests of the child, namely that all decision-making must always consider the survival and development of the child.²⁰

Violent acts that occur in the community are increasingly disturbing. In resolving a conflict or problem accompanied by violent acts. In general, violent acts can be interpreted as the deliberate use of physical force or power, threats or actual violence against oneself, others, or against groups or communities, which result in injury or are likely to injure, kill, endanger the psyche, abnormal growth or loss.²¹

In addition, the protection of witnesses and victims is regulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Children who become witnesses of criminal acts need to receive legal protection. This is based on several factors, namely, first, by paying attention to the child's mental development. If later the child who witnesses has difficulty communicating with the outside world or is traumatic for the child, special attention and protection are needed as well as recovery of the soul or psyche after the event that he witnessed. Second, children who have been witnesses to a crime are worried that they will imitate the behavior they see so that there is a possibility that the child could become a perpetrator of the crime. Third, children who are victims feel that when they grow up, children their age must also feel what the victim felt when he was a child, a kind of traumatic impact that lasts until he is an

¹⁸M. Sholeh, Sri Endah Wahyuningsih, 2017, Analysis of the Implementation of Criminal Sanctions Against Perpetrators of Child Sexual Violence in the Demak District Court, *Khaira Ummah Law Journal* Vol. 12. No. 2 June 2017

¹⁹Ishaq, 2008, *Basics of Legal Science*, Sinar Grafika, Jakarta, p. 10

²⁰Kismanto, Anis Mashdurohatun, 2017, *Legal Justice for Child Victims of Sexual Violence in Kendal Regency*, *Khaira Ummah Law Journal* Vol. 12. No. 1 Unissula

²¹Aan Hardiansyah, Akhmad Khisni, Jawade Hafidz, 2018, *Criminal Acts of Violence in the Teaching and Learning Process Reviewed from the Perspective of Criminal Law and Law Number 14 of 2005 Concerning Teachers and Lecturers*, in the *Journal of Daulat Hukum* Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 88, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2622/1972>

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adult.²²

Protection from the LPSK (Witness and Victim Protection Agency) for children who become witnesses and/or victims who do not require parental or guardian permission is given based on the determination of the Head of the local District Court at the request of the LPSK (Witness and Victim Protection Agency). With the existence of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, a child who becomes a witness to a crime receives special protection, especially protection for his/her physical and mental health.

The Power of Giving Legal Protection for Witnesses in Trials of Indecent Acts of Crime has not been implemented optimally, this is because there are still children's rights that have not been obtained by children who are victims of indecent acts, namely the right to receive rehabilitation, rehabilitation both psychologically, physically and spiritually, even though this is regulated in the provisions of the Child Criminal Justice System Law, namely in Article 90 paragraph (1) which states that in addition to the rights that have been regulated in the provisions of laws and regulations as referred to in Article 89, Child Victims and Child Witnesses have the right to medical rehabilitation and social rehabilitation efforts, both within and outside institutions. However, this right is not obtained by child victims of indecent acts of crime.

4. Conclusion

Based on the results of the research and discussion, it can be concluded as follows: The Power of Evidence of Witness Statements in the Trial of Indecent Acts, depends on several factors, including: conformity with other evidence. Conformity with the statements of other witnesses. The reasons for the witness to provide information. The lifestyle and morality of the witness. The obligation of the witness to take an oath. The Power to Provide Legal Protection for Witnesses in the Trial of Indecent Acts has not been implemented optimally, this is because there are still children's rights that have not been obtained by children who are victims of indecent acts, namely the right to receive rehabilitation, rehabilitation both psychologically, physically and spiritually, even though this is regulated in the provisions of the Child Criminal Justice System Law, namely in Article 90 paragraph (1) which states that in addition to the rights that have been regulated in the provisions of the laws and regulations as referred to in Article 89, Child Victims and Child Witnesses have the right to medical rehabilitation and social rehabilitation efforts, both within and outside the institution. However, this right is not obtained by child victims of indecent acts.

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²²Ryan Fani, 2017, "Legal Study on the Concept of Witness and Victim Protection in the Draft Criminal Procedure Code Linked to Legal Reality in Indonesia", Journal of Legal Science Volume 16 Number 1 Year 2017, <http://paramarta.web.id/index.php/paramarta/article/view/34>.

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