

## **Analysis of the Degree of Credibility of Witness Statement Evidence and Visum Et Repertum in Fulfilling Material Truth in the Criminal Justice System: A Qawa'id Fiqhiyyah Perspective**

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**Abstract.** *Evidence in criminal cases is a fundamental aspect that determines whether a criminal event actually occurred and whether a defendant can be held legally accountable. Evidence is not merely a formal process, but a means to discover material truth, the primary goal of criminal justice. This requires that every piece of evidence presented be credible and capable of making a real contribution to reconstructing the criminal event. In the Indonesian criminal justice system, the principle of material truth requires judges not to stop at formal truth, but rather to carefully and thoroughly explore the facts so that the verdict rendered truly reflects the actual situation. Therefore, each piece of evidence must be critically examined, not only in terms of quantity, but especially in terms of the quality and consistency of the information provided. Witness testimony is the most frequently used form of evidence in the process of proving criminal acts. In many cases, witnesses are considered to have direct knowledge of the criminal event, so their testimony is often key in constructing the facts. However, heavy reliance on testimony is problematic because it is highly subjective. The subjectivity of testimony stems from various factors, such as limited memory, differences in perception, psychological pressure, and even emotional influence on certain parties. Witnesses may experience distortions in what they see or hear, so the information they convey may not always align with objective facts. This situation presents unique challenges to the evidentiary process.*

**Keywords:** *Credibility; Evidence; Repertum; Qawa'id Fiqhiyyah; Witnesses and Post-Visum;*

## 1. Introduction

Evidence in criminal cases is a fundamental aspect that determines whether a criminal event actually occurred and whether a defendant can be held legally responsible.<sup>1</sup> Evidence is not merely a formal process, but rather a means to discover material truth, the primary goal of criminal justice. This requires that every piece of evidence presented be credible and capable of making a tangible contribution to reconstructing the criminal event.

In the Indonesian criminal justice system, the principle of material truth requires judges not to focus on formal truth but rather to carefully and thoroughly explore the facts so that the verdict rendered truly reflects the true circumstances.<sup>2</sup> Therefore, every piece of evidence must be critically examined, not only in terms of quantity, but especially in terms of the quality and consistency of the information provided.

Witness testimony is the most frequently used form of evidence in criminal proceedings. In many cases, witnesses are considered to have direct knowledge of the criminal incident, so their testimony is often key to establishing the facts.<sup>3</sup> However, heavy reliance on testimony is problematic because it is highly subjective.

The subjectivity of testimony stems from various factors, such as limited memory, differences in perception, psychological pressure, and even emotional influence on certain parties. Witnesses can experience distortions in what they see or hear, so the information they convey does not always align with objective facts.<sup>4</sup> This condition poses a unique challenge for the proof process.

## 2. Research Methods

This research uses a normative juridical approach that examines the principles, norms, and legal rules governing evidence in the Indonesian criminal justice system. This normative approach is used because the research is based on an analysis of laws and regulations, doctrine, and court decisions.<sup>5</sup> In addition, this study also uses a conceptual approach to examine the concept of credibility of evidence, witness testimony, *visum et repertum*, and the principles of material truth. This study also uses a comparative approach that compares the principles of proof in positive law with the principles of *Qawā'id Fiqhiyyah*, such as *al-bayyinah 'ala al-mudda'i* and *al-yaqīn lā yazūlu bi al-syakk*. This approach was chosen to obtain a comprehensive analysis of the judge's belief standards in assessing the degree of credibility of evidence.

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<sup>1</sup> A. Karim Nasution, *Masalah Hukum Pembuktian dalam Proses Pidana*. Jakarta: BPHN, 1976, p.. 22

<sup>2</sup> Lilik Mulyadi, *Hukum Acara Pidana*. Jakarta: Pustaka Utama, 1995, p.. 102

<sup>3</sup> M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan*. Jakarta: Sinar Grafika, 2002, p.. 286

<sup>4</sup> Hari Sasangka dan Lily Rosita, *Hukum Pembuktian dalam Perkara Pidana*. Bandung: Mandar Maju, 2003, p.. 13

<sup>5</sup> Zainuddin, *Op.Cit*, p.. 510.

### 3. Results and Discussion

#### 3.1. Degree of Credibility of Witness Testimony and the Visum et Repertum in the Indonesian Criminal Justice System

Evidence is the heart of the criminal justice process. Through evidence, criminal law directly addresses the empirical facts and reality of the events that form the basis of the accusations against the accused. Without valid and convincing evidence, it is impossible for the state to legitimately impose a sentence, as the state is only permitted to use its repressive power if certain legal standards that guarantee respect for individual freedom and the principle of justice have been met. Therefore, the Indonesian legal system, through Article 183 of the Criminal Procedure Code (KUHP), emphasizes the cumulative requirement that a judge may only impose a sentence if they have obtained at least two valid pieces of evidence and are convinced that the accused is the perpetrator. These two quantitative and qualitative elements operate simultaneously and cannot be separated.

The requirement of "two valid pieces of evidence" emphasizes that the evidence must be based on evidence determined by law, as stipulated in Article 184 paragraph (1) of the Criminal Procedure Code:

1. Witness testimony,
2. Expert testimony,
3. Letters,
4. Clues,
5. Defendant's testimony.

Among these five pieces of evidence, witness testimony and the post-mortem examination (which can be qualified as a letter or expert testimony) are the two most dominant pieces of evidence in cases involving physical consequences, such as assault, sexual violence, murder, and other crimes involving the victim's physical condition.

However, the fact that both are "valid pieces of evidence" does not automatically mean they have equal credibility. The negative-wettelijk system adopted by the Criminal Procedure Code requires judges not only to collect evidence but also to assess the quality of each piece of evidence. Thus, evidence does not exist in a formal hierarchical structure but has different probative value that influences the judge's conviction. It is at this point that the issue of the credibility of witness testimony and the post-mortem examination becomes crucial.

In criminal procedural law, witness testimony is understood to be the most frequently used form of evidence, but also the most susceptible to error. Andi Hamzah calls witness testimony "the most unstable form of evidence" because it is formed from subjective perceptions

influenced by the situation, emotions, and psychological state of a person witnessing an event.<sup>6</sup> In another view, Yahya Harahap explains that witness testimony is "the result of sensory capture which is not always identical to the actual incident."<sup>7</sup> This statement aligns with modern forensic psychology research, which asserts that human memory is not a static record, but rather a cognitive reconstruction that is susceptible to change. Therefore, the quality of testimony depends heavily on personal integrity, perceptual accuracy, narrative consistency, and the environmental conditions at the time of the incident.

In contrast, the post-mortem examination (*visum et repertum*) has emerged as a scientific evidence tool with a higher degree of objectivity. Article 133 of the Criminal Procedure Code (KUHP) stipulates that investigators may request testimony from forensic medical experts in cases involving the human body. This provision is a normative recognition that evidence of injuries, violence, or death cannot rely solely on human perception but must be supported by scientific assessment by experts using standard medical methods. The post-mortem examination provides a concrete picture of the victim's physical condition, the type of injury, the direction of the violence, the mechanism of injury, and the possible cause of death. These findings are not merely observational but can be retested by other experts, thus offering a high degree of reproducibility and verifiability—two epistemological characteristics that witness testimony lacks.

This difference raises a fundamental question: can these two types of evidence be positioned equally within the evidentiary system? Normatively, both are equally valid, but epistemically, they are not comparable. Witness testimony stems from human perception; a post-mortem examination stems from scientific examination. Witnesses carry the potential for bias; a post-mortem examination provides a basis for empirical verification. Witnesses can lie or be mistaken; a post-mortem examination can only be wrong if the medical method or reading is flawed, not due to human cognitive processes.

The conflict between subjective testimony and an objective post-mortem examination is not simply a technical issue of proof, but a philosophical issue concerning the source of truth in criminal law. The Indonesian criminal justice system adheres to the principle of material truth, which requires judges to objectively investigate the facts, not simply accept testimony based on legal formalities. Fuller explains that the search for material truth is at the heart of legal morality; without it, the judiciary loses its moral legitimacy.<sup>8</sup> This concept is reinforced by the correspondence theory of truth which asserts that a statement is only true if it corresponds to objective facts.<sup>9</sup> Within this theoretical framework, the post-mortem examination (*visum et repertum*) holds a superior epistemological position because it directly captures the actual condition of the victim's body, rather than an interpretation of events.

However, Indonesian judicial practice demonstrates diversity in interpreting these principles. In a number of court decisions, judges tend to place greater credence on testimony even

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<sup>6</sup> Hamzah, *Op.Cit.*, p.. 112

<sup>7</sup> Harahap, *Op.Cit.*, p.. 420

<sup>8</sup> Lon. L. Fuller, *The Morality of Law*, New Haven: Yale University Press, 1964, p.. 65

<sup>9</sup> Aristotle, *Metaphysics*, Oxford: Clarendon Press, 1924, p.. 122

when it contradicts the post-mortem examination. For example, in Supreme Court Decision No. 1783 K/Pid/2006, the Supreme Court held that even though the post-mortem examination showed injuries inconsistent with the witness's chronology, the previous level judge still prioritized the inconsistent witness's testimony. This phenomenon demonstrates a "cultural preference" for testimony as historical evidence, even though it is not always consistent with objective facts.

Conversely, in Supreme Court Decision No. 618 K/Pid/2014, the Supreme Court overturned the first instance court's decision because the judge ignored the post-mortem examination showing that the victim's injuries could not have occurred according to the witness's testimony. In its reasoning, the Supreme Court emphasized that post-mortem examinations, as scientific evidence, must be viewed objectively and should not be dismissed without compelling reasons. This decision demonstrates a structural understanding that post-mortem examinations have high probative value when it comes to the condition of the victim's body. These differing considerations reinforce the urgency of developing a more systematic academic framework regarding the credibility of these two pieces of evidence.

### **3.2. The Influence of the Credibility of Witness Testimony and the Post-Visum et Repertum on Judges' Considerations in Handling Decisions**

In the context of the Indonesian criminal evidentiary system, judges' considerations cannot be separated from the epistemic quality of the evidence presented before the court. As epistemic actors, judges have a normative obligation to carefully weigh all evidence, taking into account the differing degrees of credibility between them. Theoretically, Article 183 of the Criminal Procedure Code requires the achievement of an intellectual conviction, namely a belief obtained through logical reasoning based on at least two valid pieces of evidence. However, this normative provision does not provide guidance on how judges should assess the epistemic quality of each piece of evidence. This is where the problem arises: should testimony and the post-Visum et Repertum be considered equally, or is there a different hierarchy of probative value that influences the weight of the judge's considerations?

When analyzed epistemologically, the positions of these two pieces of evidence cannot be equated. As described in Sub-Chapter A, testimony is a form of perceptual knowledge that is susceptible to distortion, memory bias, psychological pressure, and social influence. This reliance on human memory makes testimony a fallible form of evidence, as legal epistemologists such as Edmond and Cole have argued, explaining that testimony often contains an "error-permitting structure"<sup>10</sup> On the other hand, visum et repertum is built through scientific methods that are closer to demonstrative knowledge, namely a form of knowledge obtained through direct observation, objective measurement, and professional analysis that can be tested independently by other experts.<sup>11</sup>

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<sup>10</sup> Gary Edmond & Simon Cole, "Science, Identity, and Testimony: Reliability in Legal Fact-Finding," *Law and Society Review*, Vol. 42 No. 3, 2009, p.. 357.

<sup>11</sup> Ian Freckelton & Hugh Selby, *Expert Evidence*, Sydney: Lawbook Co., 2005, p.. 112.

This difference in epistemic nature should have direct implications for the judge's deliberations. Judges are not only required to assess the validity of evidence, but also to assess how credible, reliable, and coherent one piece of evidence is compared to other pieces of evidence. The coherence theory in epistemology, developed by C.I. Lewis and further developed by Laurence Bonjour, emphasizes that a legal belief must be formed through internal harmony between all the facts.<sup>12</sup> Within the framework of criminal evidence, this harmony requires a match between testimony, the post-mortem examination, evidence, and the facts of the crime scene. When testimony is inconsistent with the post-mortem examination, the judge is epistemically unable to form a conviction based on it.

This obligation of differential assessment is also reflected in the theory of the weight of evidence, as explained by Bentham and Wigmore, which emphasizes the importance of assessing the weight of evidence based on the reliability of the information source.<sup>13</sup> Judges must not only count the amount of evidence but also assess the quality of each piece of evidence. When a post-mortem examination, as scientific evidence, demonstrates objective facts regarding the type of injury, mechanism of violence, or cause of death, while testimony provides a different picture, the judge is obligated to prioritize the post-mortem examination due to its objective nature.

However, in Indonesian judicial practice, this alignment between theory and practice is not always achieved. Several court decisions demonstrate an approach that is insensitive to differences in the credibility of evidence. For example, in a District Court Decision, later overturned by the Supreme Court in Decision No. 618 K/Pid/2014, the first-instance judge placed greater credence on the inconsistent testimony of a single witness, while the post-mortem examination revealed a type of injury that could not possibly have occurred as described by the witness. The Supreme Court asserted that this reasoning was flawed because it ignored scientific evidence that should have had greater probative value. The Supreme Court's criticism of this decision emphasized the principle of reason-responsive decisions, namely that judges' decisions must be based on logically and epistemically justifiable reasons.

A similar approach is evident in Decision No. 324 K/Pid/2015, in which the Supreme Court reiterated that judges are required to examine the correspondence between testimony and the post-mortem examination, not simply the amount of evidence. In this case, the post-mortem examination revealed sharp wounds, while the witness stated that the victim was struck with his bare hands. This discrepancy should have rendered the testimony unsuitable as a basis for judgment. However, the first-instance judge deemed the testimony more convincing simply because it was deemed "natural" and "straightforward." The Supreme Court overturned the decision, asserting that the naturalness of the narrative cannot override scientific methodology. This decision set an important precedent, affirming that criminal evidence must be oriented toward material truth, not simply the fluency of the witness's narrative.

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<sup>12</sup> Laurence Bonjour, *The Structure of Empirical Knowledge*, Cambridge: Harvard University Press, 1985, p.. 98.

<sup>13</sup> Bentham, *Op.Cit*, p.. 44.



Furthermore, Supreme Court Decision No. 1783 K/Pid/2006 also reaffirmed the principle that judges may not disregard post-mortem examinations without strong scientific justification. In this case, the first-instance judge disregarded the post-mortem examination on the grounds that it was "inconclusive" without providing a methodological argument. The Supreme Court declared this action an error in *judicando*, as it ignored the principle of scientific examination, which should be the primary parameter in assessing the occurrence of violence. This ruling confirms that testimony can only trump a post-mortem examination if there is methodological justification, not simply the judge's subjective preference.

From a legal philosophy perspective, these three Supreme Court decisions demonstrate a paradigm shift toward an epistemic-responsible adjudication approach. This approach requires judges to be accountable for the means by which they obtain convictions, not simply express them. Friedrich, Goldstick, and Haack emphasize that judges are obligated to weigh evidence using two standards: epistemic coherence and probabilistic rationality.<sup>14</sup> If testimony and a post-mortem examination contradict each other, the post-mortem examination that best meets both standards should be the primary reference. Inconsistencies between testimony and a post-mortem examination are an epistemic indicator that one source of information is untrustworthy. Because a post-mortem examination is based on objective facts, testimony that does not align with them should be deemed non-credible.

Legally, this obligation is already affirmed in Article 185 paragraph (6) of the Criminal Procedure Code: "Witness testimony alone is not sufficient to prove the defendant's guilt." This provision should be interpreted to mean that testimony, as evidence with low reliability, must be verified through more objective evidence, namely a post-mortem examination. Thus, a post-mortem examination is not merely supplementary evidence but also verifiable evidence. Without a post-mortem examination, evidence for crimes involving the human body may not meet the minimum epistemic standards for declaring the defendant's guilt.

The influence of a post-mortem examination on a judge's decision can also be seen through the analytical approach to judicial decisions. Conceptually, a judge forms a decision through three stages: (1) identification of facts; (2) construction of events; and (3) application of norms. Objective facts derived from a post-mortem examination play a crucial role in the first stage. If the facts obtained are incomplete or incorrect, the construction of events will also be flawed, and the application of norms will result in an erroneous decision. Thus, the reliability of a post-mortem examination directly impacts the accuracy of the construction of events and ultimately the quality of the judge's decision. In legal logic, errors in the major premise can be corrected, but errors in the minor premise, namely the facts, often undermine the entire legal argument.<sup>15</sup>

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<sup>14</sup> Susan Haack, *Evidence Matters*, Cambridge: Cambridge University Press, 2014, p.. 221.

<sup>15</sup> Robert Alexy, *A Theory of Legal Argumentation*, Oxford: Clarendon Press, 1989, p.. 75.

### **3.3. The Position of Witness Testimony and Visum et Repertum Evidence in the Indonesian Criminal Justice System from the Perspective of Qawa'id Fiqhiyyah**

Proving in criminal cases requires not only the presence of valid evidence according to positive law, but also epistemological standards that guarantee the realization of material truth. From an Islamic legal perspective, these epistemological standards have been systematically formulated in Qawa'id Fiqhiyyah, a collection of universal legal principles that serve as the methodological basis for determining law in various fiqh issues, including the criminal realm (fiqh al-jināyāt).<sup>16</sup>

These rules are not only moral or ethical principles, but are legal maxims that have an operational function to test the validity of evidence, consistency of facts, burden of proof, and the level of conviction required in imposing a sentence.<sup>17</sup> Thus, Islamic jurisprudence provides a highly relevant normative framework for comparing subjective evidence such as testimony with scientific evidence such as a post-mortem examination. The application of Islamic jurisprudence is important for several reasons:

1. Islamic jurisprudence has emphasized the objectivity of evidence from the outset, even long before the development of modern forensic methods.
2. The principles of Islamic jurisprudence can address the gap in the evidentiary hierarchy in the Criminal Procedure Code (KUHP), which does not establish the relative weight between witness testimony and a post-mortem examination.
3. The values of Islamic jurisprudence are highly consistent with the principle of material truth, the primary objective of Indonesian criminal justice.

In Islamic criminal law, the validity of evidence rests on four primary sources: the Qur'an, the Sunnah, the consensus (Ijma'), and the Qiyas (Qiyas). When these four sources are applied, the concept of bayyinah (validity) is born, namely any form of evidence that can convincingly reveal facts.<sup>18</sup> Classical scholars accepted various forms of evidence, including medical evidence, for example in qisās cases when a doctor testifies about the cause of death.

Thus, the post-mortem examination (visum et repertum) has strong epistemological legitimacy from a fiqh perspective because it includes expert-based evidence (khibrah) that has objective value. Fiqh jurisprudence (qawā'id) has a meta-normative function that helps establish standards of legal certainty, determine the burden of proof, and avoid decisions based on speculation. The principles of qawā'id fiduciary law align with the goals of modern law: achieving certainty, benefit, and substantive justice.

In the context of criminal evidence, these principles are important because they provide guidance when judges face conflicts between subjective witness testimony and the scientific

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<sup>16</sup> Hamid, *Op.Cit*, p.. 104

<sup>17</sup> Djazuli, *Op.Cit*, p.. 49

<sup>18</sup> Syarifuddin, *Op.Cit*, p.. 285-286



nature of the post-mortem examination (*visum et repertum*). Thus, there are four main rules of proof:

#### 1. The Principle of Al-Bayyinah 'Ala Al-Mudda'ī

This rule emphasizes that the party claiming an event or accusation must present sufficient evidence. In this context, changing or inconsistent testimony cannot meet the standard of bayyinah, while a scientifically based *visum et repertum* more easily meets this requirement.

#### 2. The Principle of Al-Yaqīn Lā Yazūlu bi al-Syakk

This rule states that certainty cannot be dispelled by doubt.<sup>19</sup> Thus, certain evidence, such as forensic medical findings, cannot be invalidated by doubtful or questionable testimony. This principle is the strongest normative argument for prioritizing a post-mortem examination (*visum et repertum*) when witness testimony is inconsistent.

#### 1. The Principle of Al-Umūr bi Maqāṣidihā

This principle emphasizes that legal determination must consider the purpose of the act and the purpose of the law itself. In criminal evidence, the purpose of law is to uphold justice and protect society from injustice. Therefore, evidence that best supports the achievement of justice must be prioritized, including the post-mortem examination (*visum et repertum*).

#### 2. The Principle of Muhakkamah

This principle means that widely recognized empirical practices and facts have legal legitimacy. In the modern context, forensic medical methods are a recognized scientific basis, so medical findings in a post-mortem examination have legitimate standing as a basis for legal determination.

### 4. Conclusion

The credibility of witness testimony and the post-mortem examination (*visum et repertum*) indicates that witness testimony, although valid as evidence under Article 184 of the Criminal Procedure Code, has fundamental weaknesses in the form of subjectivity, potential memory bias, and vulnerability to fabrication, making it often unstable and difficult to verify. Conversely, a post-mortem examination provides objective evidence based on forensic medicine that can be retested, has clear scientific standards, and demonstrates a causal relationship between action and effect, thus providing a higher level of reliability. Therefore, epistemologically, a post-mortem examination has a higher level of credibility than witness testimony. The credibility of the evidence directly influences the judge's considerations, where objective and consistent evidence such as a post-mortem examination is more capable of forming the judge's conviction as required by Article 183 of the Criminal Procedure Code.

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<sup>19</sup> Ali, *Op.Cit*, p.. 124

When witness testimony is contradictory, inconsistent, or not supported by empirical facts, its evidentiary power is weakened. Conversely, a post-mortem examination provides a more definitive direction in understanding the mechanism of the incident, the type of injury, and the causal relationship, making it more decisive in assessing the proven elements of a crime. Thus, judges in practice tend to prioritize scientific evidence over subjective witness testimony. The Qawā'id Fiqhiyyah perspective places the visum et repertum as a stronger evidence than witness testimony, because it is in line with basic principles such as al-bayyinah 'alā al-mudda', al-yaqīn lā yazūlu bi al-syakk, al-'ādah muhakkamah, and al-darar yuzāl, which overall emphasize that strong, empirical, and conviction-generating evidence should not be defeated by weak or doubtful evidence. These principles support the priority of scientific evidence in criminal law enforcement in order to prevent judicial errors and achieve material truth. Thus, normatively, Islamic law through Qawā'id Fiqhiyyah positions the visum et repertum as evidence that is superior to testimony.

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