

## Reformulation of Expert Qualifications in the Indonesian Criminal Justice System: A Comparative Study

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**Abstract.** *This research aims to compare regulations regarding expert personnel in developed countries such as the United States, England and Australia, to then serve as an example in reformulating the standardization of expert personnel in Indonesia. This research uses normative juridical methods. The approach used in this research includes conceptual, legislative and comparative approaches with other countries. The research results show that the UK has Civil Procedure Rules which broadly regulate the rights and obligations of experts, while the United States has Federal Rules of Evidence which also specifically regulate the qualification standards of experts. In Australia, regulations regarding experts have been stipulated in the Evidence Act 1995 and the Federal Court Rules 2011, which often discuss the code of ethics for experts in court. This research concludes that Indonesia needs to adopt more detailed regulations regarding experts in the criminal justice system, starting with the creation of a code of ethics that contains the requirements for becoming an expert, the rights and obligations of experts, as well as the mechanism for the award process of expert witness testimony.*

**Keywords:** Comparison; Expert; Proof; Reformulation.

### 1. Introduction

According to Article 184 of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP), expert testimony in the Indonesian criminal proof system is one of the valid pieces of evidence. KUHP mentions the existence of five pieces of evidence, namely witness testimony, expert testimony, documents, instructions, and defendant testimony<sup>1</sup>. The order of these pieces of evidence is based on the degree of probative strength. Therefore, based on this order, it can be argued that expert testimony is a piece of evidence with strong probative value in a criminal case proof process<sup>2</sup>. Before delving too deeply, it is necessary to clarify the use of the term "expert witness" commonly used by the public. In this study, the term "expert" is used to avoid confusion and to be in accordance with what is regulated in KUHP.

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<sup>1</sup> Ubwarin, E. (2014). Keabsahan Keterangan Ahli Dalam Tindak Pidana Korupsi. *Sasi*, 20(1), 1–7.

<sup>2</sup> Ward, T. (2017). Expert evidence and the Law Commission: implementation without legislation? In *Expert Evidence and Scientific Proof in Criminal Trials* (pp. 553–568). Routledge.

The use of expert testimony as a valid piece of evidence has been a significant development in the reform of criminal procedural law in Indonesia. In practice, an expert is needed to explain accurately and correctly, based on their expertise, to clarify a criminal case<sup>3</sup>. Regarding expert testimony, it is regulated in Article 1 number 28 of KUHAP, which determines that "expert testimony is a statement given by someone who has special expertise in matters necessary to clarify a criminal case for the purpose of examination." This rule is one effort to prevent the possibility of human error or negligence factors.

Experts are often present in criminal court proceedings in Indonesia with the aim of providing explanations based on their expertise on a legal issue. However, in the enforcement of criminal law in Indonesia, there are still debates about the credibility of experts providing testimony. The issue regarding experts arises because the explanation about expert testimony in KUHAP is still very minimal and subject to multiple interpretations. Explanations about expert testimony as a valid piece of evidence are only found in one article, namely Article 186 of KUHAP. Standardization, criteria, or expert qualification requirements are not detailed in KUHAP and its implementing regulations<sup>4</sup>. Based on this, it can be argued that Indonesia still does not have sufficient regulations to govern expert qualifications. Anyone can become an expert if they have specific expertise acquired through formal and non-formal education. This lack of clarity then leads to another problem: the absence of legal certainty regarding expert testimony<sup>5</sup>. Additionally, there is no legal norm that explicitly regulates when and in what cases an expert is allowed to testify in court.

KUHAP has not specifically and sequentially regulated expert testimony in one chapter<sup>6</sup>. Instead, these regulations are scattered in several articles throughout KUHAP<sup>7</sup>. Furthermore, in KUHAP, the importance of using experts is not clearly defined. Article 1 number 28 only provides a brief definition that an expert is needed to provide testimony in the criminal justice process. An expert is described as someone with special skills to shed light on court proceedings without further explanation of how a person's expertise is measured. The ideal regulation for expert testimony in the legal system in Indonesia remains a question. Starting from this question, the idea of conducting this research emerged. This study aims to formulate the legal foundations and parameters for

<sup>3</sup> Arini, K. N., & Sujarwo, H. (2021). Kedudukan Saksi Ahli dalam Persidangan Perkara Pidana. *Syariat: Jurnal Studi Al-Qur'an Dan Hukum*, 7(2), 245–256.

<sup>4</sup> Amarini, I., & Kartikawati, R. (2020). Strengthening the Position of Expert Witness in Judicial Process. *Jurnal Media Hukum*, 27(1), 44–54.

<sup>5</sup> Raspati, L. (2016). Keberadaan Ahli Dan Implikasi Negatifnya Terhadap Asas Peradilan Cepat, Sederhana Dan Biaya Ringan (Suatu Kritik Terhadap Pemeriksaan Ahli Dalam Peradilan Pidana Di Indonesia)(The Presence Of Expert And The Implication To The Principle Of Fast, Simple And Low Cost Judicial Process). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 3(2), 249–273.

<sup>6</sup> Fadhlurrahman, F., & Din, M. (2018). Kualifikasi Ahli Dalam Sistem Pembuktian Pidana Indonesia. *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana*, 2(1), 166–178.

<sup>7</sup> A'yun, R. Q. (2014). The Problems of Expert Witness in Criminal Law. *Indon. L. Rev.*, 4, 340.

someone who can be requested for expert testimony in criminal justice proceedings. This is because there is no comprehensive concept of experts in criminal procedural law in Indonesia<sup>8</sup>. Internal regulations in the law enforcement community have begun to discuss the need to determine expert qualifications.

This research has novelty value compared to previous studies entitled "The Existence of Expert Testimony in Proving Corruption Crimes," with a focus on the existence of expert testimony in corruption cases<sup>9</sup>. Another study titled "Expert Testimony in Criminal Responsibility for Severe Physical Abuse" focuses on the importance of expert testimony in proving severe physical abuse crimes<sup>10</sup>. Another research on expert testimony entitled "Objectivity of Expert Testimony in Criminal Proceedings According to KUHAP" discusses the objectivity of criminal expert testimony according to KUHAP<sup>11</sup>. The novelty of this study lies in its focus on analyzing regulations and arrangements regarding experts in other countries, namely the United States, the United Kingdom, and Australia, to reformulate standards for experts in Indonesia. This research aims to compare regulations regarding expert personnel in developed countries such as the United States, England and Australia, to then serve as an example in reformulating the standardization of expert personnel in Indonesia.

## 2. Research Methods

This research employs a normative juridical method, which is a legal research based on statutory regulations<sup>12</sup>. The subjects of this research are experts in developed countries such as the United States, England and Australia, to then be used as examples in reformulating the standardization of experts in Indonesia. This research uses three main approaches. First, the conceptual approach provides a perspective on a particular problem based on the legal concepts that accompany it. Second, the legal approach focuses on legal regulations as research material/reference. Third, a comparative approach compares legal regulations or practices between one country and another<sup>13</sup>. The data collection technique in this research is literature study, namely exploring journals, books and other information relevant to the research obtained from Google Scholar.

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<sup>8</sup> Sitompul, J. (2018). Improving the Role of Experts Under Indonesian Criminal Procedure Law: Lessons Learned From the Dutch Legal System. *Indon. L. Rev.*, 8, 109.

<sup>9</sup> Kurniawan, I. D. (2023). Eksistensi Keterangan Ahli dalam Pembuktian Tindak Pidana Korupsi. *Gudang Jurnal Multidisiplin Ilmu*, 1(1), 9–12.

<sup>10</sup> Ohoiwutun, Y. A. T. (2015). Kesaksian ahli jiwa dalam pertanggungjawaban pidana penganiayaan berat. *Jurnal Yudisial*, 8(1), 1–22.

<sup>11</sup> Rahmah, G. A., Haiti, D., & Tornado, A. S. (2023). Objektivitas Keterangan Ahli Dalam Persidangan Perkara Pidana Menurut Kuhap. *Jurnal Ilmu Hukum Prima*, 6(2), 275–286.

<sup>12</sup> Christiani, T. A. (2016). Normative and empirical research methods: Their usefulness and relevance in the study of law as an object. *Procedia-Social and Behavioral Sciences*, 219, 201–207.

<sup>13</sup> Nurhayati, Y., Ifrani, I., & Said, M. Y. (2021). Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum. *Jurnal Penegakan Hukum Indonesia*, 2(1), 1–20.

The data that has been collected is then analyzed in three stages, namely data reduction, data presentation and drawing conclusions.

### **3. Results and Discussion**

#### **3.1. Comparison of Regulations Regarding Experts in the Criminal Justice System in the United Kingdom, the United States, and Australia with Indonesia**

This first discussion will elaborate on the comparison of expert regulations in developed countries, namely the United Kingdom, the United States, and Australia, with regulations regarding experts in Indonesia.

##### **a. Civil Procedure Rules – United Kingdom**

In the English legal system, it is determined that experts are allowed to present evidence/testimony when the court cannot make a decision on a specific case, requiring skills or experience possessed by the expert<sup>14</sup>. Unlike Indonesia, England has the Civil Procedure Rules that contain regulations and provisions regarding experts. This aims to ensure the credibility of expert testimony before the trial takes place. The Civil Procedure Rules were amended in 2015, further sharpening the focus on the expertise of experts. The new amendments encourage experts to provide careful testimony during the trial, promoting increased credibility and reliability of experts presented in court<sup>15</sup>.

The Civil Procedure Rules of 2015 outline five main requirements that must be met by experts: firstly, expert testimony must be an independent product generated by the expert without the influence of trial pressure; secondly, the expert must assist the court by providing an objective and unbiased opinion on issues within their expertise, without assuming an advocacy role; thirdly, the expert must consider all facts, including those that may weaken their opinion; fourthly, the expert must acknowledge when questions or issues are beyond their expertise and when they cannot provide a definite opinion due to a lack of information; and fifthly, if the expert's views change after making a report, they must communicate these changes to all parties without delay.

Courts in England also have the authority to restrict expert testimony in various ways, such as not allowing expert testimony that contains common sense or information known to many. Additionally, an expert may be denied the opportunity to testify in court for reasons such as the judge deeming the expert's qualifications or experience insufficiently relevant to the issue at hand, the judge and jury being able to form their conclusions without expert assistance, dealing

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<sup>14</sup> Huyghe, S., & Chan, A. (2013). The evolution of expert witness law under UK and US jurisdictions. *Const. L. Int'l*, 8, 14.

<sup>15</sup> Eisenberg, P. (2018). The New Criteria for Expert Evidence in British Courts-Case Law, Statutory Rules and a Negligence Case Study. *PEOPLE: International Journal of Social Sciences*, 4(3), 458–473.

with issues decided by the judge or jury, the involved parties providing trial evidence, the expert failing to provide a timely report to allow the exchange of reports within the court's specified timeframe, and the expert failing to comply with the written requirements of the court's rules and practical guidelines.

#### **b. Federal Rules of Evidence – United States**

In the 1990s, the United States was the first country to make substantial changes in the acceptance of expert testimony in its legal system. This action later became a significant catalyst for similar practices internationally<sup>16</sup>. Similar to England, the United States also has the Federal Rules of Evidence regarding Testimony by Expert Witnesses that specifically regulate experts. This rule explains the qualification of experts by stating that someone with knowledge, skills, experience, training, or education can testify in the form of an opinion if scientific, technical, or other specialized knowledge will help the fact finder understand the evidence or determine facts in the issues being tried. The testimony must be based on sufficient facts or data, be the product of reliable methods and principles, and the expert must reliably apply the methods and principles in the court process.

The Supreme Court of the United States has also formulated Daubert criteria for expert testimony. Under the Daubert standard, courts are required to consider several factors in determining the admissibility of expert testimony, including whether the applied methods can be tested, whether the research has undergone peer review, considerations regarding the potential rate of error, and standards that control technical operations. Additionally, the general acceptance in the scientific community is considered<sup>17</sup>. By applying the Daubert method, judges act as 'gatekeepers' responsible for ensuring the reliability and relevance of expert testimony. Moreover, the United States also requires expert reports to be comprehensive, showing the expert's opinion, the underlying reasons for the opinion, data and other information considered by the expert, the expert's qualifications, and articles and expert testimony from the past.

Statements made by an expert in the past are crucial in a trial, as reflected in Court's Order 613 – Witness Prior Statement. According to this regulation, if an expert is found to have made inconsistent statements, the court will examine the expert by suspending the trial until the results of the examination are determined. The expert will be given the opportunity to explain issues related to the inconsistency of their statements. If the reasons given by the expert are deemed unconvincing by the judge, the judge can immediately decide that the

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<sup>16</sup> Krauss, D. A., & Lieberman, J. D. (2016). The admissibility of expert testimony in the United States, the Commonwealth, and elsewhere. In *Psychological expertise in court* (pp. 23–46). Routledge.

<sup>17</sup> Buskirk, A. (2009). What are the Requirements for Appointment of an Expert Under International Criminal Law and What is the Law Regarding the Examination of an In-House Expert?



expert cannot continue to provide testimony in court. In practice, such mechanisms have proven useful in screening qualified experts<sup>18</sup>. In the United States, lawyers are required to bring in qualified and competent experts.

In Indonesia, issues still arise where experts do not provide consistent testimony, as seen in the case of alleged land document forgery involving the defendant Sutrisno Lukito in the District Court of Tangerang. In this trial, an expert named Djoko Sukamtono from the Public Prosecutor's Office Beniharmoni Harefa often changed his testimony during the trial. This confused the panel of judges, who frequently reconfirmed the expert's testimony, leading to a longer trial than necessary. Compared to the United States, the Indonesian Code of Criminal Procedure (KUHP) does not regulate expert qualifications in further detail. Indonesia has not specified the requirements that must be met before expert testimony can be accepted in court and the mechanisms for when an expert brought in is incompetent to provide testimony. The lack of such regulations can result in the low reliability of an expert in the criminal trial process in Indonesia<sup>19</sup>.

### c. Federal Court Rules – Australia

Regulations regarding experts in Australia are governed by the Evidence Act 1995 and the Federal Court Rules 2011. According to Federal Court Rules Article 34A paragraph 2, an expert is defined as someone invited by a party to provide opinion evidence based on specific knowledge, training, education, or experience. The actual role of an expert, especially in significant trials, is as part of a team. They contribute to framing the case and indirectly influence decisions on what evidence is needed to support their opinions. Experts will also consult with advisors regarding the content of their reports. Subsequently, during the trial, they are at the forefront, presenting their arguments.

In Australia, an expert is usually required to read, acknowledge, and sign a code of conduct before providing testimony. Although the wording may differ in each jurisdiction, the shared goal is to ensure that the expert is not an advocate for any party and has the primary duty to assist the court.

### 3.2. Reformulating Standards for Experts in the Criminal Justice System in Indonesia

Based on the previous explanation, it can be stated that the Indonesian Code of Criminal Procedure (KUHP) does not regulate the standardization or qualifications of experts whose testimony is used in criminal trials. Furthermore, by comparing the regulations regarding experts in England, the United States, and Australia, there is a need to reformulate the standards for experts in

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<sup>18</sup> Bain, A. (2010). Considering the Proposed Changes to the Federal Rules to Civil Procedure regarding Expert Witness Discovery. *US Att'ys Bull.*, 58, 1.

<sup>19</sup> Sulistyani, W. (2019). The Admissibility of Scientific Expert Evidence Under Indonesian Criminal Justice System. *Sriwijaya Law Review*, 3(2), 152–161.

Indonesia. Reformulating means reorganizing for improvement and perfection of a rule, in this context, reformulating rules related to experts in Indonesia. Expert testimony in criminal law is closely related to the process of proving a criminal case. Proof itself is an effort to prove, meaning an attempt to declare the truth of an event, so that it can be accepted by reason regarding the truth of that event. Proof, from the perspective of procedural law, is a provision that limits court proceedings in the effort to seek and maintain the truth, by judges, public prosecutors, defendants, and legal advisors, all bound by the provisions set out in the law. The law of evidence governs the procedures for presenting facts in court as a basis for determining the truth of an event<sup>20</sup>. Expert testimony must be given under oath; otherwise, it does not have the power of proof but is only accepted as additional or reinforcing the judge's conviction, as stated in Article 161 paragraph 2 of the Criminal Procedure Code (KUHAP).

The testimony of an expert is expected not to be solely determined by formal education, especially in the field of expertise, such as forensic medicine. Still, it can also be seen from experience in a specific job that has been pursued for a very long time, which is very reasonable, according to reason, to become an expert in that particular field<sup>21</sup>. Expert testimony is essential in every criminal case proceeding in court, fundamentally shedding light on a criminal case for the sake of examination based on their expertise, enabling the rendering of a decision<sup>22</sup>.

An expert is essentially someone with specialized knowledge, experience, and expertise as a basis for providing expert testimony in a criminal case. The obligation of a doctor to provide expert testimony is regulated in the Criminal Procedure Code and medical ethics. The presence of a doctor as an expert can be requested by the public prosecutor or the suspect's legal advisor with the judge's approval. Doctors can act as fact witnesses (treating doctors) or opinion witnesses (independent experts) depending on the testimony required by the court. In providing expert testimony, doctors must follow the rules applicable in Indonesian trials, making it crucial for doctors to know the procedures and attitudes of doctors as experts and adhere to guidelines for becoming a medical expert (Susanti, 2013). An expert must have the following qualities: knowledge and practical experience of the material discussed in the case; the ability to communicate findings or opinions clearly, briefly, and understandable to the lay parties involved in the trial; flexibility of thought and confidence to modify opinions based on new evidence or opposing arguments; the ability to think from

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<sup>20</sup> Dalimunthe, F. Z. (2020). The Comparison of Evidence in State Administrative Court Between Indonesia and South Korea. *Jurnal Hukum Dan Peradilan*, 9(2), 232–254.

<sup>21</sup> Umboh, P. J. (2013). Fungsi dan Manfaat Saksi Ahli Memberikan Keterangan dalam Proses Perkara Pidana. *Lex Crimen*, 2(2).

<sup>22</sup> Wijaya, S., & Suparno, S. (2022). Legal Strength of Evidence Photocopy of Letter or Written Evidence in Civil Matter. Proceedings of the 2nd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2022, 16 April 2022, Semarang, Indonesia.

different perspectives to master any situation that may arise in the trial; and a convincing attitude and appearance in court.

A person can become an expert if they have special expertise in their field, which can be obtained through both formal and non-formal education. The judge's legal considerations then determine whether a person can be considered an expert witness<sup>23</sup>. The criteria for experts in providing their testimony on a case are in line with the criteria that an expert should have, ranging from analytical competence to relevant background and expertise in the field, namely legal knowledge. The scientific quality is already relevant and in line with the criteria; however, it would be even better if a linguist is also included so that the scientific quality of the evidence can be fully applied because it is related to linguistic science as well. The criteria for experts can be implemented only for those who are truly experts in their field, whether they are legal experts or linguists. This is aimed at ensuring that the evidence analyzed, presented, and explained can be genuinely trusted and accountable<sup>24</sup>.

Becoming an issue in determining an expert for a criminal case is because criminal legal cases cannot be generalized, making it uncertain whether an expert can explain the details according to their expertise and relevance to the criminal case they are testifying<sup>25</sup>. An expert must adhere to a code of ethics, ensuring that they provide specific and direct testimony, preventing experts from interpreting it as ethically permissible. Furthermore, based on recent case studies, the court plays a crucial role in building a culture that regards the code of ethics as a serious ethical responsibility, not just a proforma requirement<sup>26</sup>. An expert conveys their specialized expertise related to the case being tried. Expert testimony is essential in trials requiring clarification for the examination's benefit. In criminal cases, expert testimony is crucial to help the judges find material truth. Therefore, expert protection is necessary, and the expert's position must be strengthened in the judicial system. This can be achieved, among other things, by establishing a code of ethics for experts and overseeing its implementation<sup>27</sup>.

Based on the discussion, it is known that experts play a vital role in providing professional testimony in court. This testimony aims to provide further knowledge to the judge about specific issues. Nevertheless, Indonesia still lacks

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<sup>23</sup> Sudyana, D., & Soni, S. (2020). Etika Dan Profesionalisme Saksi Ahli Forensik. *Jurnal CoSciTech (Computer Science and Information Technology)*, 1(1), 13–20.

<sup>24</sup> Asmayanti, A. (2019). Linguistik forensik: linguist sebagai saksi ahli di persidangan. *Ruangguru. Com*.

<sup>25</sup> Chin, J. M., Lutsky, M., & Dror, I. E. (2019). The biases of experts: An empirical analysis of expert witness challenges. *Man. LJ*, 42, 21.

<sup>26</sup> Chin, J. M., Roque, M. S., & McFadden, R. (2020). The new psychology of expert witness procedure. *Sydney Law Review*, The, 42(1), 69–96.

<sup>27</sup> Amarini, I., & Kartikawati, R. (2020). Strengthening the Position of Expert Witness in Judicial Process. *Jurnal Media Hukum*, 27(1), 44–54.



rigid and solid regulations regarding experts, sometimes leading to questioned credibility. The criteria or qualifications for experts are not detailed in the Criminal Procedure Code (KUHP) and its implementing regulations. Moreover, explanations regarding expert testimony are only found in Article 186 of the KUHP. Indonesia also lacks explicit legal norms regulating when and in what matters an expert is allowed to present their testimony in criminal proceedings. Indonesia should learn from other countries that have solid regulations on experts and their qualifications. Based on a comparison with England, the United States, and Australia, which have detailed regulations and guidelines regarding experts, Indonesia should reformulate its expert standardization in the criminal justice system, basing it on the practices in these countries, including creating a handbook or code of conduct related to the requirements to become an expert, qualifications to become an expert, rights and obligations of experts, and the mechanism for the expert testimony process. This would greatly assist experts in understanding the proceedings, especially for those who have never participated before.

The Indonesian court system requires experts to be sworn in before or after providing testimony, as stipulated in Article 242 of the Penal Code. While this is good, it would be even better if the expert also signs a statement indicating that they have read the trial handbook and promise to follow the entire trial process and provide truthful testimony. This has been implemented by Australia since 2005. Indonesia needs to establish clear and rigid expert qualification guidelines. Similar to the United States, which has very clear qualifications with the Daubert standard, namely, whether the applied method can be tested; whether the research has undergone peer review; consideration of the potential rate of error or potential error level and standards controlling technical operations; and whether there is general acceptance in the scientific community. This would help judges decide whether the expert is eligible to testify in court. There is also research by Professor John R Hayes, which found that an expert can only be considered an expert if they have a minimum of 100,000 hours of experience or the equivalent of 10 years. This may serve as a recommendation for regulating experts in Indonesia, where a minimum of 10 years of experience may be required to become an expert. The United States has also regulated in court's orders that if an expert provides inconsistent testimony from previous statements, the trial will not continue, and a thorough examination of the inconsistency will be conducted. If proven inconsistent and unconvincing, the judge will not allow the expert to testify. This practice may be worth emulating by Indonesian courts, as there are still many cases where experts provide inconsistent testimony. Parties only want to win their cases without considering the credibility and reliability of the experts they bring to court. Perhaps in the future, there is a need for clearer rules on sanctions for experts who provide inconsistent testimony, such as not allowing the witness to testify for a specific

period. This is done to create a deterrent effect for witnesses who are not 'serious' in providing testimony.

#### 4. Conclusion

Based on the discussion, it can be concluded that Indonesia needs to reformulate expert standardization in the criminal justice system by adopting more detailed regulations on experts, similar to those in England, the United States, and Australia. Reformulating the standardization of witnesses in Indonesia begins with the creation of a code of conduct containing requirements to become an expert, the rights and obligations of experts, and the mechanism for the expert testimony process. However, it is not enough to stop at this stage; there must be encouragement from authorities to ensure that this code of conduct is read and understood by prospective experts. Additionally, there must be standards for qualifications, experience, and the mechanism for presenting witnesses due to the lack of credibility and reliability of an expert brought to court. Therefore, expert testimony can shed light on a criminal case being tried.

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