RLJ Ratio Legis Journal
ISSN 2830-4624
published by
Master of Law, Faculty of Law
Universitas Islam Sultan Agung

The Validity of the De Auditu's Testimonials in Proving Criminal Case

Okky Prastyo Ajie[*)]

[*)] Faculty of Law, Universitas Islam Sultan Agung Semarang, Indonesia, E-mail: Okk1pras@gmail.com

Abstract. *The purpose of this research is to examine and analyze the validity of the testimony of De Auditu's estimonium witnesses in proving the crime of premeditated murder. The approach method used is normative juridical (legal research) which is called doctrinal legal research and library law research. By using the working theory of law and progressive law related to the problems studied. The results of the analysis of the validity of the witness testimonium de auditu can be considered as valid evidence with several conditions, that is, the witness is not allowed to be the only piece of evidence, but other valid evidence must be present. In addition, the testimony of the witness must be relevant to the criminal incident so that it can be used as evidence.*

Keywords: Crimina; Legitimacy, Testimonium.

1. Introduction

The essence of the rule of law itself is to provide justice for its citizens.[1] The State of Indonesia is a state based on law as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. One of the characteristics of a state based on law is to make law the foundation and basis for legitimacy in aspects of life, society, nation and state. So that a rule of law that makes law the commander in chief, in the sense that the state is organized based on law not power.

The Code of Procedure contained in the guidebook with the aim of finding and obtaining or at least approaching the material truth, namely the complete truth of a criminal case by applying the provisions of the criminal procedure law honestly and precisely, with the aim of finding out who the perpetrator who can be charged with committing a violation of the law, then requests an examination and a decision from the court to find out whether it is proven that a crime has been

[1]Abdul Aziz Hakim. 2011. State of Law and Democracy. Yogyakarta: Student Library, p.8

committed and whether the person charged can be blamed.[2] So that through criminal procedural law, for every individual who commits irregularities or violates the law, especially criminal law, can be processed in an examination procedure in court, because according to criminal procedural law to prove the guilt or not of a defendant must go through an examination in a court session as well as to prove he is right. Whether or not the defendant committed the act charged requires a proof.[3]

The definition of proof in court according to subekti's opinion is that it convinces the judge about the truth of the arguments or arguments raised in a dispute.[4]However, according to Darwin PRinst's view, what is meant by proof is proof that it is true that a criminal incident has occurred and the defendant who is guilty of committing it must therefore be held accountable.[5]Meanwhile, according to Sudikno Martokusumo, juridical proof is nothing but historical proof. This juridical proof tries to establish what has happened concretely. Both in juridical and scientific proof, proving essentially means considering logically why certain events are considered true.[6]

Evidence in the Criminal Procedure Code, there are five valid pieces of evidence for the process of proof of criminal procedures regulated in Article 184 paragraph (1) of the Criminal Procedure Code consisting of evidence: Witness statements, expert statements, letters, instructions, and statements of the accused .So thatfive types of evidence that have been regulated in the Book of Laws Criminal Procedure Code, testimony of witnesses as evidence in the first order. So it can be concluded that witness testimony has a very important position in the evidentiary process in court. The existence of evidence of witness testimony, a fact of a criminal incident will be more revealed. But not all witness testimony has legal value as evidence In order for a witness statement to have valid evidentiary value, it must meet material requirements and must also meet formal requirements.[7]So that the existence of pEvidence plays a very important role in the process examination of the trial court, with this proof is the fate of the accused determined, and only by proving a criminal act can be sentenced criminal punishment. If the results of evidence with evidence that provided by law is not sufficient to prove the guilt of

[2] Law on Criminal Procedure Law, Law Number 8, LN Number 76 of 1981

[3] Rendy Surya Aditama, Umar Ma'ruf, Munsharif Abdul Chalim. Criminal Law Policy Against Children as Perpetrators of Psychotropic Crimes at the Magelang Resort Police. Journal of Sovereign Law Vol. 1.No. March 1 (2018), accessed:http://jurnal.unissula.ac.id/index.php/RH

[4] R. Subekti. 2001. The Law of Evidence. Jakarta: Pradnya Paramita, p.1

[5] Darwin Print. 1998. Criminal Procedure Code in Practice. Jakarta: Djembatan, p.133

[6] Sudikno Mertokusumo. 1999. Indonesian Civil Procedure Code. Yogyakarta : Liberty, p.109

[7] Wahyu Sudrajad, Umar Ma'ruf.Econstruction as an Effort Unraveling the Criminal Act of Premeditated Murder (Case Study of the Legal Area of the Banyumanik Police, Semarang).*Khaira Ummah Law Journal Vol. 12. No. September 3 (2017).*Accessedhttp://jurnal.unissula.ac.id/index.php/RH/article/view/21279/6993

the accused to the defendant, then the defendant is released from punishment, and vice versa if the defendant's guilt can be proven, then the accused must be found guilty and he will be punished.[8]

In fact, during the trial process of a case that is in court, it is often found that there are witnesses who do not see the incident for sure only heard about the incident from the victim or someone else. Of course this will make it difficult to prove in the trial process by the defendant. Because witnesses who hear information from other people or people who have not experienced it themselves in the Criminal Procedure Code cannot be used as witnesses, and witnesses are called witnesses Testmonium De auditu.[9] In this study, the aim was to examine and analyze the validity of the testimony of De Auditu's estimonium witness in evidence crime of premeditated murder.

2. Research Methods

Approach method usingnormative juridical (legal research) is called doctrinal legal research and library law research. Normative legal research is a way to find the truth from a normative perspective based on the logic of jurisprudence.[10] The specifications used are analytical descriptive in nature, provide systematic, logical explanations, analyze them in order to review literature, legislation, applicable legal norms and analyze them to draw conclusions.[11]The data source used by secondary data consists of primary legal materials in the form oflegislation relating to legal research conducted.

The data collection method with the main activities carried out is library research, reviewing, studying and processing literature, laws and regulations, judge's decisions and articles or writings related to the issues to be studied.[12]The method of data analysis was carried out qualitatively with data analysis methods by grouping and selecting data obtained from library research.

---

[8] M. Yahya Harahap. 2006. Discussion of Problems and Application of the Criminal Procedure Code (Examination
Court Sessions, Appeal, Cassation, and Judicial Review. Jakarta: Sinar Graphic, p.273.

[9] Oscar Stefanus Setjo,and Umar Ma'ruf. Investigation of Children Which Conflicting With Law in Narcotics Criminal Acts In Law Area of the Semarang City Police Jurisdiction.*Journal of Sovereign Law Volume 3 Issue 2, June (2020),*Accessible:http://jurnal.unissula.ac.id/index.php/RH

[10] Johnny Ibrahim. 2005. Theory of Normative Legal Research & Methods, Jakarta: Bayumedia, h. 37

[11] Amirudin and Zainal Asikin. 2004. Introduction to Legal Research Methods. Jakarta: Raja Grafindo Persada, p.118

[12]Abdulkadir Muhammad. 2004.*Law and Legal Research,*Cet. I. Bandung: Citra Aditya Bakti, p.50

3. Results and Discussion

3.1. The Validity of the Witness's Testimonium De Auditu in Proving the Crime of Premeditated Murder at the Ende District Court

Sovereignty of law is a fundamental principle of being a state which places the law as the highest authority, the law holds the highest authority in the administration of the state. The rule of law places law as the basic substance in a rule of law social contract.[13]So it can be concluded that the meaning of a rule of law state is a country that positions the law as commander in chief. So a rule of law basically has the basic principle that the government (ruler) runs the government based on law not power, where the law here contains equality, participation and human rights. However, in practice there are still deviations from the law, whether done intentionally or unintentionally. One of the legal embodiments lies in the application of Criminal Procedure Law related to evidence. Because the evidence will determine the position between the suspect and the victim, so that the law can consider legal facts and evidence.[14]

Criminal procedural law has the aim of finding and obtaining or at least approaching the material truth of a criminal event by applying the provisions of criminal procedural law in an honest and appropriate manner with the aim of finding out who the perpetrators may be charged with committing a violation of the law.[15] So that in proving a case it is necessary to have evidence. What is meant by evidence is something (goods and not people) determined by law that can be used to strengthen charges, demands or lawsuits or to reject charges or claims.[16] Meanwhile, the opinion of R. Atang Ranomiharjo that legal means of evidence are tools that have something to do with a crime, where these tools can be used as evidence to generate confidence for the judge in the truth of a crime that has been committed by the defendant.[17]

Arrangements for means of evidence in the Criminal Procedure Code have been determined in Act No. 8 of 1981 concerning the Criminal Procedure Code. In his

[13]Jazim Hamidi and Mustafa Lutfi. 2009. Indonesian Presidential Institution Law. Malang: Alumni, p.9

[14] Sekar Tresna Raras Tywi, Ira Alia Maerani, Arpangi. Law Enforcement against Entrepreneurs who Conduct Criminal Acts to Pay Wages Under the Minimum Wage. Journal of Sovereign Law Volume 4 Issue 1, March (2021). Accessed :http://jurnal.unissula.ac.id/index.php/RH/article/view/13882/5379

[15] Rio Tumiyadi Maulana, Sri Kusriyah. Law Enforcement against Traffic Accident.*Journal of Sovereign Law Volume 4 Issue 1, March (2021).*Accessed :http://jurnal.unissula.ac.id/index.php/RH/article/view/14201/5387

[16] Koesparmono Irsan and Armansyah. 2016. Guide to Understanding the Law of Evidence in Civil Law and Criminal Law. Bekasi: Gramata Publishing, p.173.

[17] Andi Sofyan and Abd. Asis. 2014. Criminal Procedure Code "An Introduction". Jakarta: Kencana, p.230

explanation that there should be no other evidence than specified in the law. The means of evidence specified in the Criminal Procedure Code consist of witness statements, expert statements, letters, instructions and statements of the accused as referred to in Article 184 paragraph (1) of the Criminal Procedure Code. While sOne of the important pieces of evidence to prove the guilt of the accused in court is witness testimony. Witness testimony has very important evidentiary value, in placing it in the Criminal Procedure Code it ranks first. This means that it is impossible for a case to be processed from the police to trial in court if there are no witnesses who have seen, heard or experienced the crime. Almost all evidence in criminal cases always relies on examining witness statements. At least in addition to proving with other evidence, it is always necessary to provide evidence with witness testimony.[18]

However, the reality is that not all witness statements presented at trial have value as evidence. Witness statements that have value as evidence are statements in accordance with Article 1 Number 27 of the Criminal Procedure Code, i.e. the witness saw it himself, heard it himself, experienced it himself, and stated the reasons for his knowledge. From the confirmation of the sound of Article 1 Number 27 of the Criminal Procedure Code it is connected with the sound of the explanation of Article 185 Paragraph (1) of the Criminal Procedure Code which states that witness testimony does not include information obtained from other people or*testimonium de auditu*. So how central is the role of witness testimony in terms of proving a case so that there is the principle of Unus Testis Nullus Testis meaning that one witness is not a witness, to be able to prove a case the Public Prosecutor must at least present at least 2 two witnesses accompanied by other evidence to convince the judge in considering the case. Even in certain cases there were cases in trials where there were no witnesses who saw the incident for certain and only heard the incident from the victim. Of course it makes it difficult to prove what the defendant did, because the witness only listens to the testimony of the person or victim.

The validity of the testimony of the witness Testimonium De Auditu in proving the crime of premeditated murder at the Ende District Court thatthere is a criminal case where in the trial witnesses present testimony de auditu as evidence. The murder incident was committed by the defendant HD Alias T Alias NEO, Saturday 16 May 2020 at the Mbongawani Village, Ende Selatan District, Ende Regency. Z Alias Palembang, where the hard water is very dangerous if it comes into contact with the human body and can cause death. That the actions of the defendant together with the witness HA Alias King against the victim AN alias MA, caused the victim AN alias MA to receive an injury and eventually died according to the post mortem Et Repertum Number: 47/TU.01/UM/V/2020 dated 17 May 2020 from

[18] Syaiful Bakhri. 2009. The Law of Evidence in Criminal Justice Practice. Jakarta: Center for the Study and Development of Legal Studies, p.47

the house Regional General Hospital of Ende Regency.

The legal facts revealed during the trial, evidence at the Ende District Court of a defendant named HD Alias T Alias NEO against the victim AN alias MA, in decision Number 6/Pid.B/2021/PN End. There were 3 (three) witnesses on behalf of DA, EN, YS. The three witnesses did not see for themselves, did not hear for themselves, and did not experience or witness the events that the defendant was accused of. These witnesses are only testimonium de auditu or are not fact witnesses. The relation in the trial is whether the de auditu testimony can be legal evidence, in criminal cases, in accordance with Article 185 Paragraph (1) of Act No. 8 of 1981 concerning Criminal Procedure Code. The Criminal Procedure Code states that the testimony of a witness as evidence is what the witness stated in court. The elucidation of the article states "in the testimony of witnesses it does not include those obtained from other people or "testimonium de auditu." Therefore the provisions of the Criminal Procedure Code do not place testimony de auditu as valid evidence. Then regarding the conditions for becoming a witness, Alfitra added that the testimony of a witness alone was considered insufficient. Article 185 Paragraph (2) states "The testimony of a witness alone is not sufficient to prove that the defendant is guilty of the act he was charged with". The provisions in this article originate from the principle of criminal law Unus Testis Nullus Testis, which means that one witness is not a witness.[19]

Expert statements, letters and instructions in general have been used at all levels of examination and have not caused many problems in their application at trial. However, it is a different case with the defendant's testimony which sometimes still creates problems, both regarding its existence as valid evidence, the problem of the strength of the evidentiary value at trial, as well as its position as evidence. According to Andi Hamzah in the Criminal Procedure Code that Article 185 Paragraph (5) of the Criminal Procedure Code states that both opinion and fiction, what is obtained from thoughts alone is not a witness statement. Article 185 Paragraph (1) states that the testimony of witnesses does not include information obtained from other people or testimonium de auditu. Thus the testimony of witnesses obtained from other people is not valid evidence.[20]In addition, Andi Hamzah stated that in accordance with the KUHAP's explanation which stated that de auditu testimony was not permitted as evidence, and was also in line with the objectives of the criminal procedural law, namely seeking material truth, and also for the protection of human rights, where the testimony of a witness who just hearing from other people is not guaranteed to be true. So de auditu testimony or hearsay evidence should not be used in Indonesia.[21]However, with the

[19] Alfitra. 2011. The Law of Evidence in Criminal, Civil and Corruption Procedures in Indonesia. Jakarta: Achieving Hope for Success, p.60
[20] Andi Hamza. 2013. Indonesian Criminal Procedure Code. Second Edition. Jakarta: Sinar Graphics, p.264
[21]ibid

Constitutional Court Decision, the limitation regarding witnesses has changed where this has been confirmed in decision Number 65/PUUVIII/2010 regarding the review of Article 1 point 26 and number 27 jo. Article 65 jo. Article 116 paragraph (3) and paragraph (4) jo. Article 184 paragraph (1) letter a Act No. 8 of 1981 concerning Criminal Procedure Code (KUHAP) against Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution.

If the above explanation is carefully examined, the formulation of the verdict, the panel of judges of the Constitutional Court clearly expands the meaning of witnesses as regulated in Act No. 8 of 1981 concerning the Criminal Procedure Code. The expansion of this meaning means that it has been recognized*testimonium de auditu*as evidence. The judges of the Constitutional Court stated that the existence of witnesses testimonyum de auditu is very important even though they have not heard, seen, or experienced a criminal incident themselves. And the important role of witnesses is not only based on what they see, hear, and experience events themselves. However, the importance of witnesses is based on their testimony which has relevance to criminal events.[22]The legal considerations given by the panel of judges of the Constitutional Court only provide an explanation of the value of the testimony of a witness, not only based on what he saw, heard, or personally experienced the occurrence of a criminal incident.[23]In this case, de auditu testimony also needs to be heard by the judge, even though it does not have value as evidence, it can strengthen the judge's conviction based on two other pieces of evidence. Due to the fact that the judge's observation is not included as evidence in Article 184 of the Criminal Procedure Code, de auditu testimony cannot be used as evidence through the judge's observation, but can be through directive evidence whose judgment and consideration is left to the judge.[24]

4. Conclusion

The validity of the testimony of the witness Testimonium de auditu in proving the crime of premeditated murder at the Ende District Court, the results of the study indicate that the witness testimony de auditu can be considered as valid evidence with several conditions, namely that the witness is not allowed to be the only piece of evidence, but must have evidence other legal. In addition, the testimony of the witness mustrelevance to criminal eventsso that it can be used as evidence.

5. References

[22] Steven Suprantio. The binding power of the Constitutional Court's decision regarding Testimonium de auditu in the Criminal Court. Judicial Journal Vol. 7 No. 1 April 2014: 34 – 52, p.35
[23] Asprianti Wangke. The Position of De Auditu Witnesses in Judicial Practice According to Criminal Procedure Code, Lex Crimen.Vol. VI/No. 6/Aug/2017, p.150
[24] Andi Hamzah, Op.Cit, p.265

Abdul Aziz Hakim. 2011. State of Law and Democracy. Yogyakarta: Student Libraries.

Abdulkadir Muhammad. 2004. Law and Legal Research, Cet. I. Bandung: Citra Aditya Bakti.

Alfitra. 2011. The Law of Evidence in Criminal, Civil and Corruption Procedures in Indonesia. Jakarta: Achieve Asa Success.

Amirudin and Zainal Asikin. 2004. Introduction to Legal Research Methods. Jakarta: Raja Grafindo Persada.

Andi Hamzah. 2013. Indonesian Criminal Procedure Code. Second Edition. Jakarta: Sinar Graphics.

Andi Sofyan and Abd. Asis. 2014. Criminal Procedure Code "An Introduction". Jakarta: Kencana.

Asprianti Wangke. The Position of De Auditu Witnesses in Judicial Practice According to Criminal Procedure Code, Lex Crimen.Vol. VI/No. 6/Aug/2017.

Darwin Print. 1998. Criminal Procedure Code in Practice. Jakarta : Djambatan.

Jazim Hamidi and Mustafa Lutfi. 2009. Indonesian Presidential Institution Law. Malang: Alumni.

Johnny Ibrahim. 2005. Theory of Methods & Normative Legal Research, Jakarta: Bayumedia.

Koesparmono Irsan and Armansyah. 2016. Guide to Understanding the Law of Evidence in Civil Law and Criminal Law. Bekasi: Gramata Publishing.

Law on Criminal Procedure Law, Act No. 8, LN Number 76 of 1981

M. Yahya Harahap. 2006. Discussion of Problems and Application of the Criminal Procedure Code (Court Examination, Appeal, Cassation, and Judicial Review. Jakarta: Sinar Graphic.

Oscar Stefanus Setjo,and Umar Ma'ruf. Investigation of Children Which Conflicting With Law in Narcotics Criminal Acts In Law Area of the Semarang City Police Jurisdiction.*Journal of Sovereign Law Volume 3 Issue 2, June (2020),*Accessible:http://jurnal.unissula.ac.id/index.php/RH.

R. Subekti. 2001. The Law of Evidence. Jakarta: Pradnya Paramita.

Rendy Surya Aditama, Umar Ma'ruf, Munsharif Abdul Chalim. Criminal Law Policy

Against Children as Perpetrators of Psychotropic Crimes at the Magelang Resort Police. Journal of Sovereign Law Vol. 1.No. March 1 (2018), accessed:http://jurnal.unissula.ac.id/index.php/RH.

Rio Tumiyadi Maulana, Sri Kusriyah. Law Enforcement against Traffic Accident.*Journal of Sovereign Law Volume 4 Issue 1, March (2021).*Accessed :http://jurnal.unissula.ac.id/index.php/RH/article/view/14201/5387.

Sekar Tresna Raras Tywi, Ira Alia Maerani, Arpangi. Law Enforcement against Entrepreneurs who Conduct Criminal Acts to Pay Wages Under the Minimum Wage. Journal of Sovereign Law Volume 4 Issue 1, March (2021). Accessed :http://jurnal.unissula.ac.id/index.php/RH/article/view/13882/5379.

Steven Suprantio. The binding power of the Constitutional Court's decision regarding Testimonium de auditu in the Criminal Court. Judicial Journal Vol. 7 No. April 1, 2014: 34 – 52.

Sudikno Mertokusumo. 1999. Indonesian Civil Procedure Code. Yogyakarta: Liberty.

Syaiful Bakhri. 2009. The Law of Evidence in Criminal Justice Practice. Jakarta: Center for the Study and Development of Legal Studies.

The 1945 Constitution of the Republic of Indonesia

The Criminal Code (KUHP)

Wahyu Sudrajad, Umar Ma'ruf.Econstruction as an Effort Unraveling the Criminal Act of Premeditated Murder (Case Study of the Legal Area of the Banyumanik Police, Semarang).*Khaira Ummah Law Journal Vol. 12. No. September 3 (2017).*Accessedhttp://jurnal.unissula.ac.id/index.php/RH/article/view/21279/6993.