

The Power of Evidence of Child Witness Testimony in Criminal Acts of Monothesis

Indrie Hapsari

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-Mail: indriehapsari2@gmail.com

Abstract. *The purpose of this research is to determine and analyze the evidentiary power of child witness testimony in the crime of indecent assault. To determine and analyze the judge's considerations in assessing child witness testimony to prove the crime of indecent assault. The approach method used by the researcher is in a normative legal manner. Specifications This research is a research analytical descriptive. The data sources in this study are secondary data obtained from literature studies. The data were analyzed qualitatively, using the theory of evidence and the theory of child protection. Based on the results of the research that the evidentiary power of child witness testimony in cases of sexual assault has the power to prove that it is valuable as an indication that strengthens the judge's conviction. This testimony is supported by other evidence, such as a post-mortem examination (visum et repertum) in cases of sexual assault/sexual assault. Child witness testimony is usually corroborated by written evidence (visum) explaining the presence of wounds or signs of violence on the victim's genitals and the testimony of an adult, to fulfill the minimum requirement of two pieces of evidence and to form the judge's conviction. The judge's considerations in assessing child witness testimony to prove the crime of sexual assault are based on the child's testimony's consistency with other evidence (visum/statements of other witnesses). The judge prioritizes child protection, treats the child's testimony as valid evidence if supported by trial facts, and considers the psychological impact on the victim in proving the crime of sexual assault. These considerations ensure that even though the child witness has limitations, the consistency of his story with other supporting facts in court (evidence) is sufficient to sentence the perpetrator.*

Keywords: *Crime; Evidence; Indecent; Statement; Strength.*

1. Introduction

The position of children is an inseparable part of the survival of humanity and the survival of a nation and state. With this important role of children, they receive special protection from the constitution, this is stated in the 1945 Constitution

Article 28B paragraph (2): that the State guarantees that every child has the right to survive, grow and develop and has the right to protection from violence and discrimination. The best interests of children should be considered, as the best interests for the survival of humanity. Therefore, we all always strive to ensure that children do not become victims of violence, nor do children fall into evil deeds or other reprehensible acts.

Children are a vital part of the survival of the nation and state. Due to their growth and development, they require special legal protection. Legally, efforts to protect children's rights through various legal instruments began with the 1959 UN Declaration on the Rights of the Child.¹Regarding this matter, Indonesia also has a national legal instrument, namely Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. This child protection law was passed because children are considered a vulnerable group and are victims of crime.

Crime is an event that will occur in life and therefore requires special handling by all parties, both the government and society.²As time goes by, legal issues are becoming more frequent. Although law enforcement is implemented to prevent these crimes, it is not easy to completely eradicate them. In essence, crime always increases as society develops.

One form of crime that is currently rampant is sexual violence, which mostly affects children as the main victims.³The crime of molestation committed against children is included in crimes against morality as regulated in Article 419-Article 423 of Law Number 1 of 2023 concerning the Criminal Code, Article 4 paragraph (2) letter c of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, also regulated in Article 15, Article 54, Article 59, Article 66, Article 69A and Article 76E of Law Number 35 of 2014 concerning Child Protection, as well as several articles in other regulations.

The regulations that govern the role of a law enforcer in implementing and enforcing criminal law can be said to be Criminal Procedure Law.⁴The interpretation of Criminal Procedure Law according to the opinion of legal expert Prof. Dr. Wirjono Prodjodikoro is a system that contains how or the role of the government in carrying out a demand until a Court Decision is obtained, then if there is a person or group of people who commit a crime, who is obliged to carry out the Court Decision. According to Andi Hamzah, Criminal Procedure Law has

¹R. Wiyono, 2019, *Juvenile Criminal Justice System in Indonesia*, Sinar Grafika, Jakarta, p. 7

²Wirjono P., 2008, *Certain Criminal Acts in Indonesia*, Refika Aditama. Jakarta, p. 15.

³Rajali Capah and Rahul Ardian Fikri, 2023, "Legal Protection for Children as Victims of Sexual Violence", *Journal of Social Science Research*, Faculty of Social Science, Pancabudi Development University, Medan, Vol. 3 No. 4, p. 3

⁴Luhut MP Pangaribuan, 2013, *Criminal Procedure Law*, 1st ed., Djambatan, Jakarta, p. 76

the aim of seeking a truth which is only the initial goal, while the final goal is to create an orderly, peaceful, just, and prosperous state in community life.⁵

To implement the initial and final goals of Criminal Procedure Law, as explained by Andi Hamzah, a trial requires a process of proof. This is the primary method used by judges. Proof is a crucial part of criminal proceedings, as it determines whether a defendant is right or wrong in committing the crime charged. Through the proving process, judges obtain the basis for issuing a verdict in a criminal case.⁶Based on the provisions of Article 235 of the Republic of Indonesia Law Number 20 of 2025 concerning the Criminal Procedure Code, evidence is the Judge's observation; and everything that can be used for the purposes of evidence in court proceedings as long as it is obtained in a manner that is not against the law.

Based on the problem formulation above, the purpose of this study is to determine and analyze the evidentiary strength of child witness testimony in the crime of indecent assault. To determine and analyze the judge's considerations in assessing child witness testimony to prove the crime of indecent assault.

2. Research Methods

The approach method used in writing this law is normative juridical, namely law is conceptualized as norms, principles or dogmas. The author conducted research, including analytical descriptive research, focused on problems that describe the provisions contained in legal theory and statutory regulations, including the research object. Then, he analyzed these regulations to find answers to the problems posed. The sources and types of data in this study are secondary data obtained from literature studies. This study uses qualitative data analysis methods.

3. Results and Discussion

3.1. The Evidential Strength of Child Witness Statements in Criminal Acts of Indecent Acts

By nature, children generally still have insufficient reasoning to distinguish between good and bad. Criminal acts committed by children are generally a result of imitation or influence from their environment, as childhood is the period when a person's character, personality, and character are formed.⁷

⁵Andi Hamzah, 2011, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta, p. 19

⁶A. Karim Nasution, 1996, Legal Problems of Evidence in Criminal Proceedings, Attorney General's Office Training Center, Jakarta, p. 136

⁷Yudi Hendarto and Umar Ma'ruf, 2018, Diversion In Children Criminal Justice System Through Restorative Justice, in Journal of Daulat Hukum Volume 1 (2), Published Master of Law, Faculty of Law Unissula, p. 331, <http://jurnal.unissula.ac.id/index.php/RH/article/viewFile/3269/2404>

Violent acts occurring in society are increasingly disturbing. Resolving a conflict or problem involves violent acts. Generally, violent acts can be defined as the deliberate use of physical force or power, threats, or actual violence against oneself, others, or a group or community, resulting in injury or a high likelihood of injury, death, psychological harm, abnormal development, or loss.⁸

Proof is a set of provisions that outline and guide the legally permitted methods for proving the guilt of a defendant. Proof is also a set of provisions that regulate the means of evidence that are permitted by law and may be used by a judge to prove the guilt of the accused.⁹The status of children as witnesses in criminal cases has been legally recognized in the Criminal Procedure Code (KUHAP). The validity of children's testimony has evidentiary value for judges, but there is no obligation for judges to accept the truth of every witness's testimony, including that of child witnesses.

To determine the level of evidence from a witness's statement, before giving a statement the witness needs to be sworn in. Article 210 paragraph (12) of the Republic of Indonesia Law Number 20 of 2025 concerning the Criminal Procedure Code states that before a witness or expert gives a statement, the judge takes an oath or promise from the witness or expert based on their religion or belief that they will provide true and honest information. The testimony from the child victim was obtained without an oath, so it does not meet the formal requirements.

Article 1 number 3 of Law Number 11 of 2012 concerning the Child Criminal Justice System states that a child who is a witness to a criminal act, hereinafter referred to as a child witness, is a person who is under 18 years of age who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case that he/she heard himself/herself, saw himself/herself and experienced himself/herself.

The legitimacy of child witnesses in providing information can be seen in Article 221 point (a) of the Republic of Indonesia Law Number 20 of 2025 concerning the Criminal Procedure Code, namely that a person who can be asked to provide information without an oath or promise is a child who is not yet 14 (fourteen) years old.

In examining a criminal case in court, it is necessary to explain the legal facts using evidence. According to Indonesian criminal procedure law, a minimum of 2 (two)

⁸Aan 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 Legal Sovereignty 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>

⁹M Yahya Harahap. 1988. Discussion of Problems and Implementation of the Criminal Procedure Code Volume I. Pustaka Kartini, Jakarta, p. 793

pieces of evidence are required. Cases of child molestation, as regulated in the Criminal Procedure Code (KUHP), require high precision, starting from the investigator. Because cases of child molestation are usually not witnessed, only the victim witnesses to report, and the scene of the incident is far from the police station, making it difficult for the police to obtain evidence. As a result, evidence can be lost instantly, and the public lacks knowledge on how to store evidence. A factor that hinders the crime of child molestation is proving the testimony of child victims. This is because:

- 1) The matter of collecting evidence because in cases of sexual harassment there are no other witnesses other than the victim herself who experienced it;
- 2) The victim's statement was not frank due to fear, shame, trauma and threats from the perpetrator;
- 3) *Visum et Repertum* which only provides the physical condition of the victim

The defendant's actions have been legally and convincingly proven to fulfill the formulation of the criminal act charged in Article 82 paragraph (1) of Law Number 17 of 2016 concerning the stipulation of government regulations in lieu of Law of the Republic of Indonesia Number 1 of 2016 concerning the second amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning child protection in conjunction with Article 76 E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

The legal provisions in providing evidence of the testimony of Child Victim Witnesses fulfill the material requirements as stated in Article 1 number 47 of the Criminal Procedure Code, namely that a Witness is a person who provides information regarding a criminal event that he/she heard himself/herself, saw himself/herself, and experienced himself/herself, or a person who has and/or controls data and/or information related to the case being examined for the purposes of Investigation, Inquiry, Prosecution, and/or examination in court.

Special examination procedures require the presence of a parent, guardian, or social worker/community counselor. The examination is conducted using child-friendly (non-intimidating) methods and often utilizes indirect or audio-visual testimony to reduce trauma (based on the principle of child witness protection). Child witness victims are entitled to psychological assistance and identity privacy during the legal process. Therefore, in cases of child molestation under the age of 2, the post-mortem examination and testimony from a forensic psychologist are often more crucial than the child's own verbal testimony.

The examination of a 2-year-old child victim in a molestation case does not require a live court appearance. Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasize protections to prevent

revictimization. The victim's testimony can be substituted for a video recording of the examination, testimony from a counselor/expert, or a teleconference hearing, with the presence of parents and a psychologist.

The evidentiary power of child witness testimony in cases of sexual assault has the power to prove that it is valuable as an indication that strengthens the judge's conviction. This testimony is supported by other evidence, such as a post-mortem examination in cases of sexual assault/sexual assault. Child witness testimony is usually supported by written evidence (a post-mortem examination) explaining the presence of wounds or signs of violence on the victim's genitals and the testimony of an adult, to fulfill the minimum requirement of two pieces of evidence and to form the judge's conviction.

3.2. Judges' Considerations in Assessing Child Witness Statements to Prove Criminal Acts of Indecent Acts

In court practice, in a judge's decision, before these legal considerations are proven, the judge will first draw out the facts that emerged in the trial and constitute a cumulative conclusion from the witness's statement, the defendant's statement, and the evidence.

The facts of the trial are based on the location, time, and manner in which the crime was committed. Furthermore, it is important to consider the direct consequences of the defendant's actions, the evidence used, and whether the defendant can be held responsible for their actions. After the facts of the trial are presented, the judge will consider the crimes charged by the public prosecutor. The judge will assess the relationship between the facts, the crimes charged, and the defendant's guilt before making a decision. Furthermore, the panel examines whether the defendant has committed the crimes charged and whether they have been legally and convincingly proven according to law. The consideration of the crimes charged must include theoretical aspects, doctrinal perspectives, jurisprudence, and the position of the case at hand, then establish a specific position.

The process of examining a person suspected or reasonably suspected of being a perpetrator of a crime cannot be separated from the Law of the Republic of Indonesia Number 20 of 2025 concerning the Criminal Procedure Code, which is the source of Formal Criminal Law (Criminal Procedure Law) in the Indonesian Criminal Law system. Formal Criminal Law regulates how the state, through its instruments, exercises its right to convict and impose penalties. Basically, criminal procedural law is formal law. This means that the law used to enforce material criminal law. Efforts to enforce material criminal law are carried out through the criminal trial process. In the criminal trial process, the judge acts as a law enforcer and is given the authority to examine and decide the case.

The Criminal Code (KUHP) actually stipulates provisions regarding criminal sanctions for 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 stopping at the stage of investigation by the police or prosecutors, thus not reaching the court process. To achieve success in law enforcement in eradicating the rampant cases of sexual violence, strengthening serious coordination and cooperation between police officers, prosecutors, and judges in the courts is essential. The verdicts of judges examining sexual violence cases in various courts vary. In fact, in some cases of child sexual violence, the sentence is only a mere six months' imprisonment. This is justified because within the maximum and minimum limits (one day to twelve years) the judge is free to determine the appropriate sentence.¹⁰

In the Guidelines for the Implementation of the Criminal Procedure Code (KUHP) it is stated that the purpose of criminal procedure law is: "to seek and obtain or at least approach the material truth, namely the most complete truth of a criminal case by applying the provisions of criminal procedure law honestly and precisely with the aim of finding out who the perpetrator can be accused of committing a violation of the law, and then requesting an examination and decision from the court to find out whether it is proven that a crime has been committed and whether the person accused can be blamed." To prove whether or not the defendant committed the act accused, evidence is needed.¹¹

It is important to understand that witness testimony plays a crucial role because it can serve as evidence in a criminal case. To determine the evidentiary value of a witness's testimony, a witness must swear an oath or affirmation before testifying. In criminal cases involving children as witnesses, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System refers to them as child witnesses. Child witness testimony is essential during investigations, prosecutions, and trial proceedings.

The judge assesses the child's statement under the age to achieve legal certainty (minimum 2 valid pieces of evidence). In the latest criminal procedural law system (Article 235 paragraph (1) of the Republic of Indonesia Law Number 20 of 2025 concerning the Criminal Procedure Code), the judge considers the testimony of child witnesses (under 18 years old) not as the main binding evidence, but as indicative evidence that has independent value. The judge will combine it with other evidence such as physical evidence or expert testimony to achieve legal certainty (minimum 2 valid pieces of evidence).

¹⁰M. Sholeh, Sri Endah Wahyuningsih, 2017, Analysis of the Implementation of Criminal Sanctions Against Perpetrators of Child Sexual Violence Crimes at the Demak District Court, *Khaira Ummah Law Journal* Vol. 12. No. 2

¹¹Johan Wahyudi. 2012, "Electronic Documents as Evidence in Court Proofing". *Perspective Journal* Vol. 17 No. 2, p. 11.

Under Law of the Republic of Indonesia Number 20 of 2025 concerning the Criminal Procedure Code (the new KUHP), testimony from a 2-year-old child witness in a sexual assault case is not sworn in but is considered valid as indicative evidence or witness testimony, the value of which is left to the judge's discretion. The examination must be accompanied by a counselor/psychologist, prioritize the child's best interests, and be supported by other evidence such as a post-mortem examination.

In deciding a case, the judge is the final link in the criminal justice system, acting as the interpreter of the applicable law. Through the judge's interpretation, a decision containing comprehensive considerations, the application of the law to a particular case can be studied, evaluated, and re-examined.¹² To resolve problems or conflicts presented to them impartially based on applicable law, judges must be independent and free from influence from any party, including the government, in their decision-making process. In making decisions, judges are bound only by relevant facts and the legal principles that serve as the legal basis for their decisions.¹³

Perpetrators of sexual abuse against a child under 2 years old face a minimum of 5 years and a maximum of 15 years in prison, as well as a maximum fine of Rp 5 billion (approximately US\$300,000) under the Child Protection Law. If committed by a close relative (parent/guardian), the sentence is increased by one-third, and the perpetrator may be subject to chemical castration or the installation of an electronic detection device.

Under Indonesian law, as of 2026, perpetrators of sexual abuse of children under 2 years old can be subject to chemical castration. This is regulated as a severe additional measure, in addition to the primary penalty (imprisonment), especially if the perpetrator causes serious injury, mental illness, infectious disease, or death to the victim.

The judge's considerations in assessing child witness testimony are based on the child's testimony's consistency with other evidence (post-mortem examinations/statements of other witnesses). The judge prioritizes child protection, treats the child's testimony as valid evidence if supported by the facts of the trial, and considers the psychological impact on the victim in proving the crime of sexual abuse. These considerations ensure that even if the child witness has limitations, the consistency of their story with other supporting facts in court (evidence) is sufficient to sentence the perpetrator.

¹²Niken Savitri, 2010, *Women's Human Rights, Critique of Feminist Legal Theory on the Criminal Code*, Refika Aditama, Bandung, p. 127

¹³Arief Sidharta, 2015, "Ethics and Code of Ethics of the Legal Profession", *Veritas et Justitia Journal*, Volume 1 Number 1, p. 235.

4. Conclusion

The Power of Evidence of Child Witnesses in Criminal Acts of Indecency has the power of proof that is valuable as an indication that strengthens the judge's conviction. This testimony is supported by other evidence, such as a visum et repertum in cases of sexual crimes/indecency, child witness testimony is usually strengthened by written evidence (visum) explaining the presence of wounds or signs of violence on the victim's genitals and adult testimony, to fulfill the minimum requirement of two pieces of evidence and to form the judge's conviction. The Judge's Consideration in Assessing Child Witness Testimony to Prove Criminal Acts of Indecency is based on the conformity of the child's testimony with other evidence (visum/statements of other witnesses). The Judge prioritizes child protection, treats the child's testimony as valid evidence if supported by trial facts, and considers the psychological impact on the victim in proving the crime of indecency. This consideration ensures that even though the child witness has limitations, the conformity of his story with other supporting facts in court (evidence) is sufficient to convict the perpetrator. As for the suggestions from this research, Ensure that the child is accompanied by a parent, guardian or companion (social worker/advocate) when providing information to ensure freedom from pressure. Judges are expected to be more careful in assessing the consistency of children's statements and combining them with other valid evidence to form the judge's confidence in deciding cases.

5. References

Journals:

- Aan Hardiansyah, Akhmad Khisni, Jawade Hafidz, 2018, Tindak Pidana Kekerasan Dalam Proses Belajar Mengajar Ditinjau Dari Perspektif Hukum Pidana Dan Undang-Undang Nomor 14 Tahun 2005 Tentang Guru Dan Dosen, dalam *Jurnal Daulat Hukum* Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, hlm. 88, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2622/1972>
- Arief Sidharta, 2015, "Etika dan Kode Etik Profesi Hukum", *Jurnal Veritas et Justitia*, Volume 1 Nomor 1, hlm. 235.
- Johan Wahyudi. 2012, "Dokumen Elektronik Sebagai Alat Bukti pada Pembuktian di Pengadilan". *Jurnal Perspektif* Vol. 17 No. 2
- M. Sholeh, Sri Endah Wahyuningsih, 2017, Analisis Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Kekerasan Seksual Anak Di Pengadilan Negeri Demak *Jurnal Hukum Khaira Ummah* Vol. 12. No. 2
- Rajali Capah dan Rahul Ardian Fikri, 2023, —Perlindungan Hukum terhadap Anak sebagai Korban Kekerasan Seksual||, *Journal Of Social Science Research*, Fakultas Sosial Science Universitas Pembangunan Pancabudi, Medan, Vol. 3 No.4,

Yudi Hendarto and Umar Ma'ruf, 2018, Diversion In Children Criminal Justice System Through Restorative Justice, dalam *Jurnal Daulat Hukum* Volume 1 (2), Published Master Of Law, Faculty of Law Unissula, h. 331, <http://jurnal.unissula.ac.id/index.php/RH/article/viewFile/3269/2404>

Books:

- A. Karim Nasution, 1996, *Masalah Hukum Pembuktian Dalam Proses Pidana*, Pusdiklat Kejaksaan Agung, Jakarta
- Andi Hamzah, 2011, *Hukum Acara Pidana Indonesia*, Sinar Grafika, Jakarta,
- Luhut M.P. Pangaribuan, 2013, *Hukum Acara Pidana*, cet. Ke-1, Djambatan, Jakarta
- M Yahya Harahap.1988. *Pembahasan Permasalahan dan Penerapan KUHAP Jilid I*. Pustaka Kartini, Jakarta
- Niken Savitri, 2010, *HAM Perempuan, Kritik Teori Hukum Feminis Terhadap KUHP*, Refika Aditama, Bandung
- R. Wiyono, 2019, *Sistem Peradilan Pidana Anak di Indonesia*, Sinar Grafika, Jakarta
- Wirjono P., 2008, *Tindak-Tindak Pidana Tertentu di Indonesia*, Refika Aditama. Jakarta.