



THE URGENCE OF EXPERT WITNESS CERTIFICATION IN CRIMINAL CASES

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Abstract:

This research is a normative legal research. Expert witnesses are needed in the trial process to provide clarity regarding the evidence presented in the trial process. For this reason, every person who will provide testimony as an expert witness in a trial must have a certificate of expertise as an expert witness, which is given by the Supreme Court or an official institution that obtains permission from the Supreme Court. The goal is that the information given at the trial can be justified legally and morally. Mistakes in providing information in court can be detrimental to the parties in litigation.

Keywords:

Urgence, Witness

1. Introduction

Criminal justice is basically a series of processes that start from investigation, investigation, prosecution, examination of cases in court to the judge's decision stage. (Flora, 2018) In the process of examining cases in court, the proof stage is a very important stage to determine whether someone is guilty or not accused of committing a crime. In the evidentiary process, there is one important step that cannot be left out, namely the examination of expert testimony and or expert witness statements.

The testimony of expert witnesses is one of the strengths and can even be a weakness for parties who are in the trial process of criminal cases. This is because the information obtained from experts and or expert witnesses is used to strengthen the judge's belief the occurrence of a crime. Even though the expert has not personally seen, experienced or heard of a criminal event, their statements are often indispensable in trial process of criminal cases in court.

Philosophically, expert testimony is needed to provide clarity about whether or not the defendant's actions were true (Hanafi & Pamuji, 2019) but the existence of expert witnesses in Indonesia doesn't have clear criteria and qualifications. Until now, every person who claims to have the ability in a particular field of expertise can testify as an expert witness in a criminal case trial, without having to first prove the quality of his competence. On the other hand, the judge can also accept or reject the presence of an expert who is presented at the trial by one of the parties, on the grounds that it is not in accordance with his competence. However, the refusal is felt heavy for the judge, because if the judge refuses the presence of an expert witness, it is feared that it will result in reporting to the Judicial Commission, which is authorized to supervise the performance of judges.

The Criminal Procedure Code (KUHAP) has made progress in relation to expert witnesses, compared to the Het Herziene Inlandch Reglement (HIR). This progress is in the placement of expert testimony as evidence in the trial.

Meanwhile, Article 295 of the HIR does not mention expert witnesses as legal evidence at trial. Article 295 HIR only states that the evidence at trial only includes testimonies, letters, confessions, and signs that the events or legal facts presented at the trial actually occurred in order to obtain a true and fair judge's decision. (Anshoruddin, 2004)

The evidentiary process as an effort to encourage the birth of the judge's conviction as stipulated in Article 183 paragraph (1) of the Criminal Procedure Code, should not be seen solely as a process of proving the presence or absence of a criminal act, but should be seen as a process to seek material truth. If the evidentiary process is only seen from the process of proving the presence or absence of a criminal act, then the judge's conviction as one of the conditions for imposing criminal sanctions is considered to be less proportional. Meanwhile, in criminal acts, the judge's conviction is an important element in imposing criminal sanctions for the defendant.

The importance of evidence in criminal cases is also regulated in Article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which is formulated: "No one can be sentenced to a crime, except if because the evidence is valid according to the law. Before the judge makes a decision, he must be convinced that someone who is considered responsible has been guilty of the act he has been accused of." Meanwhile, the types of evidence that have the power of proof in a trial are regulated in the Criminal Procedure Code, namely Article 184 of the Criminal Procedure Code, consisting of witness statements; Expert Statement; Letter; Instruction; and the Defendant's Statement. Meanwhile, the method of using evidence and the strength of evidence is regulated in Article 185 of the Criminal Procedure Code to Article 189 of the Criminal Procedure Code.

Given the importance of expert witness evidence in the trial process of criminal cases, especially as a basis for convincing judges of the existence or absence of criminal acts committed by the defendant, it is of course important for expert witnesses who will give testimony at trial to have certain criteria or qualifications, so that the information provided is presented at the trial has the truth in accordance with the standard of expertise required in the process of proof at trial. If anyone who claims to have expertise in a certain field related to evidence in a criminal case trial, can provide information on behalf of an expert, it is feared that the expert witness's testimony will mislead the judge and/or burden the defendant. Then the problem can be formulated as follows: "what is the urgency of certification of expert witnesses in the trial process of criminal cases in court". This research is a normative legal research. (Michael, 2022)

2. Research Results and Discussion

2.1. Experts and Expert Witnesses in Criminal Cases

It is everyone's duty to be a witness in a trial. This obligation is regulated in the elucidation of Article 159 paragraph (2) of the Criminal Procedure Code, which is formulated "A person who becomes a witness after being summoned to a court hearing to give testimony, but by refusing that obligation he can be subject to a criminal sentence based on the provisions of the applicable law. Likewise with experts." Argumentatively, the provisions of the article indicate that being a witness in a trial is an obligation for everyone.

In principle, one witness in a trial is not enough to prove the guilt or innocence of the accused. In Latin, the term "unus testis ulus testis" is used (one witness is not a witness). In Indonesia, this principle is contained in Article 185 paragraph (2) of the Criminal Procedure Code, which is formulated: "The testimony of a witness alone is not sufficient to prove that the defendant is guilty of the act he is accused of". Furthermore, Article 1 number 26 of the Criminal Procedure Code stipulates that: "a witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case which he has heard, seen and experienced."

Article 1 point 1 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, states that "Witnesses are people who provide information for the purposes of investigation, investigation, prosecution, proof and examination in court of matters that they have heard themselves, he himself experienced or he knew himself that was pleased with the occurrence of a crime". The definition of witness as described above refers to certain conditions that must be met, including:

- 1) Someone who sees firsthand the events or legal events that exist.
- 2) Someone who directly hears the incident or events.
- 3) Someone who has experienced it himself, or who is a victim of the event.

Referring to the explanation and requirements to become an expert witness, there is a significant difference between the expert testimony and the expert witness testimony. The term "expert testimony", Article 1 number 28 of the Criminal Procedure Code, explains that: "expert testimony" is information given by someone who has special expertise on matters needed to make light of a criminal case for the purpose of examination. The person who provides "expert testimony" means the person who is also called the "expert statement". Thus, a person who provides information in accordance with his expertise is called an expert, and because of his expertise, that person has the competence to provide information in court according to his expertise.

According to Article 1 number 27 of the Criminal Procedure Code, witnesses are evidence of a criminal event that the witness saw for himself, heard himself, experienced himself, and stated the reasons for his knowledge. So, in this case, the giver of expert testimony has a different position with the witness, because his position in a legal event is different. An expert witness who in giving his testimony did not witness himself, did not see himself, and did not hear himself, on the events that have occurred. Furthermore, Article 1 point 27 of the Criminal Procedure Code, if it is connected with the explanation of Article 185 paragraph (1) of the Criminal Procedure Code, namely any witness testimony outside of what he himself heard in a criminal event that occurred or was outside what he saw or experienced in the criminal event that occurred, the information provided. What is given outside of hearing, sight, or own experience regarding a criminal event that occurred cannot be used as evidence. This kind of information has no evidentiary power.

2.2. The Urgency of Expert Witness Certification

In order to distinguish between an expert and an expert witness, special conditions should be given to the person who will testify at the Court as an expert witness, so as to distinguish it from the expert who will testify at the Court. The special requirement is the certification of expertise for expert witnesses. The urgency of giving special conditions, through expert witness certification, is made aware of the following reasons:

2.3. Philosophical Reason

The judicial process is a process that aims to obtain legal justice, as fair as possible by placing the wrong party and the right party in a position that is in accordance with legal facts. To obtain real justice, if in the judicial process there is uncertainty about the subject matter of the case, it is necessary to present witnesses and or experts who can help clarify the substance of the case that is in the judicial process.

In certain cases, whether civil cases, criminal cases, state administrative cases, and other cases, in an effort to find the truth to achieve justice, one is often faced with an essential problem, namely the difficulty of finding which evidence is wrong and which is right. The difficulty generally lies in the lack of understanding of the substance of the problem that is being processed in the Court. The contributing factors include the limited knowledge possessed by law enforcement officers, both prosecutors as prosecutors and judges as case breaker in court trials.

Philosophically, the presence of expert witnesses in the trial process is a necessity, because expert witnesses in the trial aim to provide information in accordance with their expertise. The expert's statement aims to make it clear and clear regarding the criminal acts committed by the defendant in the trial process. The clarity of the information that will be given related to this crime is the basis for the need for certified expert witnesses so that their statements can be justified morally and legally.

2.4. Juridical Reason

It is known that the criminal procedure law (KUHAP) does not clearly and firmly regulate who is meant by expert witnesses and experts. In the Criminal Procedure Code there are only a few articles that provide an understanding of witnesses or people who have the criteria to present statements in court as experts. These articles are Article 1 number 26 of the Criminal Procedure Code, and Article 1 number 27, Article 1 number 28 as described in the previous explanation. Furthermore, Article 120 paragraph (1) of the Criminal Procedure Code stipulates: "In the event that an investigator deems it necessary, he or she can ask for the opinion of an expert or a person with special expertise.

Article 120 paragraph (1), it is formulated: "The expert takes an oath or makes a promise before the investigator that he will give information according to his best knowledge, except if it is due to his dignity, work or position which requires him to keep a secret, he can refuse to disclose it. provide the requested information. Furthermore, Article

132 of the Criminal Procedure Code paragraph (1) states that: "In the event that a complaint is received that a letter or writing is fake or falsified or suspected to be fake by the investigator, then for the purposes of the investigation, the investigator may ask for information regarding this matter from an expert". The provisions of this article provide an explanation that an expert is an expert who has expertise on fake letters and writings.

Taking into account several provisions of the articles in the Criminal Procedure Code as described above, it appears that there are several phrases that still require explanation, such as the phrase "special skills, special abilities, special skills", and so on. The words in the sentences of these articles, such as those that "...have special skills, are not followed by the terms or criteria of what is meant by special expertise, of course, invite question marks that still need explanation. The absence of specific criteria or requirements for expertise, in the norms of the Criminal Procedure Code, in the perspective of legal theory, such norms can be classified into the type of vague norm (vague norm), or also often referred to as vague norm.

In the provisions of Article 133 paragraph (1) of the Criminal Procedure Code, it is formulated: "In the case that an investigator for the interest of the judiciary handles a victim, whether injured, poisoned or dead, which is suspected to be due to an incident which constitutes a criminal act, he is authorized to submit a request for expert information to a judicial medical expert or doctor and or other experts. For the record, in the article there are other expert sentences, namely "judicial medical experts or doctors and or other experts". In the provisions of the article it is not clear who is meant by other experts, who can be asked for assistance to be questioned regarding the injured victims as referred to in Article 133 paragraph (1) of the Criminal Procedure Code. The phrase "other experts" in the article may be made possible by doctors who are experts in judicial medicine, or doctors and other experts, or other experts. The phrase "other expert", in this case who is meant by another expert, can be interpreted as a pharmacist, or poison expert, and so on. The ambiguity about who is meant by an expert in Article 133 paragraph (1) of the Criminal Procedure Code is emphasized in Article 179 paragraph (1) of the Criminal Procedure Code, which is formulated "Everyone whose opinion is requested as a "judicial medical expert or doctor or other expert" is obliged to provide expert testimony for the sake of justice. To avoid different interpretations of expert witnesses, it is necessary to have legal certainty over who can provide testimony as expert witnesses in the trial process. Thus, in order to prevent differences of opinion regarding expert witnesses, considering that the normative rules are not clear, it is necessary to stipulate requirements for expert certification for everyone who will provide information in the trial process as an expert.

In view of the unclear regulation on who is meant by a witness who can provide information in the trial process, it is quite reasonable if an expert witness who will give testimony in a trial is determined on the meaning, requirements, authority, responsibility through expert witness certification, with the aim of obtaining legal certainty. In this regard, it is necessary to make rules or normalize in positive law. For example, in corruption in the procurement of government goods and or services, it is necessary to have expert certification in the field of building construction, particularly in relation to the corruption in the procurement of goods and services.

2.5. Sociological Reason

A person who is accused of committing a criminal act of corruption is not sufficient in his statement in court to convince the judge that he is innocent. In formal criminal law, what is explained by the accused who is the perpetrator of a crime is only for himself, and is not used to convince the judge or the prosecutor. This principle is regulated in Article 189 paragraph (3) of the Criminal Procedure Code which reads: "The defendant's testimony can only be used against himself". Therefore, in presenting witnesses in court, there must be people who have adequate competence and capacity for expertise. The problem is that there are no standard requirements and criteria for expert witnesses. The case of a judge refusing an expert witness in court as stated in the previous description is a concrete example of the judge's doubts about an expert witness in a court trial. The problem will be different if the expert has an expert certificate, then it is normalized in the laws and regulations, so there is no reason for the judge to refuse the presence of the expert who will give information in court. This is one of the legal reasons for the need for certification for experts whose statements can be used as evidence in court as regulated in Article 184 of the Criminal Procedure Code.

2.6. Reason for Legal Certainty

One of the goals of law is to realize legal certainty, in addition to expediency and justice.(Sukendar et al., 2019) Philosophically, legal certainty is a concept that aims to provide legal protection for every citizen from the arbitrariness of the authorities, so that the law imposes the responsibility on the state to implement it. In this case, it can be seen from the location of the relationship between the issue of legal certainty and the state. (Manullang, 2007) Legal certainty can be realized through statutory regulations, in this case called legal certainty. Such legal protection is also referred to as normative legal protection, meaning that when a statutory regulation is made and promulgated, the legal protection provides certainty, because it regulates clearly and firmly. Certainty and not giving rise to multiple interpretations, which in turn lead to injustice and legal uncertainty. Legal certainty because of the law, becomes a system of norms with other norms, so that they do not clash or cause conflicting norms. Norm conflicts arising from uncertainty in laws and regulations can take the form of norm contestation, norm reduction, or norm distortion. (Chroust, 1944)

Legal certainty is not only in the form of articles in the law, but also there is consistency in the judge's decision between one decision and another judge's decision for similar cases that have been decided.(Tantiono & Soeskandi, 2017) So to ensure legal certainty for witnesses experts in providing information in court, it should be regulated in the legislation. These arrangements include the position of experts, qualifications of experts, expert requirements, including certification as experts in their fields, rights and obligations of experts, and so on. So that the existence of experts really has legal clarity that can guarantee the interests of all parties, especially defendants and victims, especially related to cases of criminal acts of corruption, the state will also be protected from expert testimony that really has quality with evidence of having a certificate of expertise.

2.7. Reason for Justice

Justice is a word that is easy to say, but difficult to implement. Viewed from the perspective of the theory of justice, the judge's rejection of the expert presented by the defendant doesn't reflect the existence of equality and impartiality. Terminology comes from the word fair, which means impartial, appropriate, not arbitrary. So, justice is defined as a fair attitude or action. In English literature, the term justice is called "justice" the root word is "jus". The word "jus" means law or right, thus one of the meanings of "justice" is law".

Not requiring certification for expert witnesses can cause injustice to the expert to provide testimony in court or to the party using the expert. With the certification requirements for experts, it is hoped that there will be no discrimination against experts who are presented in court to give their statements in an effort to uphold justice through the trial process in court.

3. Conclusion

Expert witnesses are needed in the trial process to provide clarity regarding the evidence presented in the trial process. For this reason, every person who will provide testimony as an expert witness in a trial must have a certificate of expertise as an expert witness, which is given by the Supreme Court or an official institution that obtains permission from the Supreme Court. The goal is that the information given at the trial can be justified legally and morally. Mistakes in providing information in court can be detrimental to the parties in litigation. Because expert testimony serves to convince the judge whether or not the defendant's actions are criminal acts that must be held accountable by the defendant and can be subject to criminal sanctions.

References

- Anshoruddin, 1950-. (2004). Hukum pembuktian menurut hukum acara Islam dan hukum positif. 174.
- Chroust, A.-H. (1944). The Philosophy of Law of Gustav Radbruch. *The Philosophical Review*, 53(1), 23. <https://doi.org/10.2307/2181218>
- Flora, H. S. (2018). KEADILAN RESTORATIF SEBAGAI ALTERNATIF DALAM PENYELESAIAN TINDAK PIDANA DAN PENGARUHNYA DALAM SISTEM PERADILAN PIDANA DI INDONESIA. *University Of Bengkulu Law Journal*. <https://doi.org/10.33369/ubelaj.v3i2.6899>
- Hanafi, H., & Pamuji, R. A. (2019). URGENSI KETERANGAN AHLI SEBAGAI ALAT BUKTI BERDASARKAN SISTEM PERADILAN PIDANA DI INDONESIA. *Al-Adl: Jurnal Hukum*, 11(1). <https://doi.org/10.31602/al-adl.v11i1.2020>
- Manullang, F. (2007). Menggapai Hukum Berkeadilan. *Kompas*.
- Michael, E. I. T. (2022). PERLINDUNGAN HUKUM TERHADAP TAYANGAN INFOTAINMENT YANG BERHUBUNGAN DENGAN SIARAN TV DAN ANAK. *Jurnal Akrab Juara*, 7(1), 65–79. <http://akrabjuara.com/index.php/akrabjuara/article/view/1756>
- Sukendar, A. Y. S., Raissa, A., & Michael, T. (2019). Pengurangan Pekerja Anak Perempuan Di Lingkungan Pondok Pesantren. *MIZAN, Jurnal Ilmu Hukum*. <https://doi.org/10.32503/mizan.v8i2.679>
- Tantiono, E. P., & Soeskandi, H. (2017). JAMINAN KEPASTIAN HUKUM BAGI TERSANGKA DALAM SYARAT-SYARAT PENAHANAN. *Mimbar Keadilan*. <https://doi.org/10.30996/mk.v0i0.2199>