



## Analysis of Proof of Testimonium de Auditu in Cases of Moral Violations

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**Abstract.** *Witness testimony is a crucial piece of evidence in proving the occurrence of a criminal act. Witnesses as people who see, hear and experience a criminal incident themselves are very effective in the process of proving criminal cases. The weakness is that not all cases have enough witnesses who saw, heard and experienced the criminal incident. Rape cases, for example, are known only to the victim and the perpetrator. This article will discuss the evidentiary power of testimonium de auditu witnesses who did not see, hear or experience a criminal incident themselves. This research was conducted through a case study approach. The results of this research are that the information provided by the testimonium de auditu witness has evidentiary power as long as it does not conflict with the statements of other witnesses and other evidence.*

**Keywords:** *proof; witness statements; testimonium de auditu.*

**Abstrak.** Keterangan saksi merupakan alat bukti yang menentukan dalam membuktikan terjadinya suatu tindak pidana. Saksi sebagai orang yang melihat, mendengar dan mengalami sendiri suatu peristiwa pidana sangatlah efektif dalam proses pembuktian perkara pidana. Kelemahannya, tidak semua perkara memiliki cukup saksi yang melihat, mendengar dan mengalami peristiwa pidana. Perkara pemerkosaan misalnya, yang hanya diketahui oleh korban dan pelaku semata. Artikel ini akan membahas terkait dengan kekuatan pembuktian dari saksi testimonium de auditu yang tidak melihat, mendengar dan mengalami sendiri suatu peristiwa pidana. Penelitian ini dilakukan melalui pendekatan studi kasus. Hasil penelitian ini adalah keterangan yang disampaikan saksi testimonium de auditu memiliki kekuatan pembuktian selama tidak bertentangan dengan keterangan saksi lain dan alat bukti lain.

**Kata Kunci:** *pembuktian; keterangan saksi; testimonium de auditu.*

### INTRODUCTION

In accordance with the guidelines for implementing the Criminal Procedure Code (KUHAP), the aim of criminal procedural law is to seek material truth. Material truth is the complete truth of a criminal case by applying the provisions of criminal procedural law honestly and precisely with the aim of finding out who the perpetrator is who can be accused of committing a legal violation, and then requesting an examination and decision from the court to find out whether it is proven that an act a crime has been committed and the person accused can be blamed (Hiariej, 2020).

When a judge considers everything about whether a defendant is guilty or not, the judge is bound to the presence of evidence. The evidence is according to Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) as stated in Article 184 paragraph (1). Beyond that, it cannot be used as valid evidence. If the provisions of Article 183 are linked to various types of evidence, the defendant can only be sentenced to a criminal sentence if guilt can be proven with at least two pieces of evidence. So that the minimum evidence that can be considered sufficient to justify the defendant's guilt is at least or at least proven by two valid pieces of evidence to prove the defendant's guilt (Rusyadi, 2016).

Based on the provisions in Article 184 paragraph (1) of the Criminal Procedure Code, one of the valid pieces of evidence is witness testimony, which is the first piece of evidence that can

be used in court. Almost all evidence in criminal cases always relies on examining witness statements. Witness testimony is in its position as evidence in order to shed light on a case being examined which is expected to give rise to the judge's confidence that a criminal act has actually occurred and the defendant is guilty of committing the crime. A witness must meet the requirements as a person who knows personally, heard and experienced a criminal act, which is regulated in Article 1 number 26 of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) which states that: "A witness is a person who can provide information for the purposes of investigation, prosecution and justice regarding a criminal case that they have heard for themselves, seen for themselves and experienced for themselves."

One example is Decision Number 14/Pid.Sus/2015/PN. In the Batang case, the criminal act of molestation against children in trial practice at the Batang Court, namely the presentation of witness statements known as *testimonium de auditum* witness statements, including witness Zamroni and witness Darsono, the victim's father. The testimony of a *testimonium de auditum* witness is information about facts and things that the witness himself did not hear, see or experience. The use of *testimonium de auditum* witnesses in the criminal case examination process is strictly and clearly prohibited and has no legal evidentiary value, but in reality now quite a few *testimonium de auditum* witnesses are used in examining witnesses in court.

## **RESEARCH METHOD**

Legal research is a scientific activity carried out to solve legal issues faced by identifying legal problems, carrying out special reasoning, analyzing the problems faced, then providing solutions to the problems. Legal research is doctrinal or normative legal research using a case study research approach (Fajar ND & Achmad, 2007). Analysis of legal materials was carried out using the syllogism method through deductive thinking, using the Batang District Court Decision as research material which the author studied and linked it to the value and strength of the evidence of the *testimonium de auditum* statement.

## **RESEARCH RESULT AND DISCUSSION**

Proving witness statements is the most important part of the criminal case examination process at trial. Criminal cases cannot be separated from the evidence of witness statements. Witness testimony is the most important form of evidence in criminal cases. Almost all evidence in criminal cases always relies on examining witness statements at trial. However, apart from proving with witness testimony, proof with other evidence is still needed (Itok Dwi Kurniawan, 2023) Evidence from witnesses in a trial is useful for uncovering a criminal incident which will later be used as one the judge's consideration to determine whether or not the defendant's actions are proven and the defendant's guilt.

Based on the Criminal Procedure Code regarding witness testimony, Article 1 points 26 and 27 state that: "a witness is a person who can provide information for the purposes of investigation, prosecution and justice regarding a criminal case that he himself heard, saw for himself and experienced for himself". A witness statement is one of the pieces of evidence in a criminal case in the form of a statement from a witness regarding a criminal incident that he himself heard, saw for himself, and experienced for himself by stating his reasons and knowledge.

The provisions of Article 185 paragraph (1) of the Criminal Procedure Code state that "witness testimony as evidence is what the witness states at the court hearing". So this definition only limits the meaning of witness testimony as evidence to what the witness stated at trial. So

the confirmation of the sound of Article 1 number 27, connected with the sound of the explanation of Article 185 paragraph (1), can be concluded:

1. Any information provided outside of hearing, seeing or own experience regarding a criminal incident that occurred cannot be used and assessed as evidence, and such information has no evidentiary power.
2. Testimonium de auditu or witness statement that he obtained as a result of hearing from other people. This information has no value as evidence. Because basically a witness's statement at a court hearing in the form of a description of a criminal event that occurred or a fact of an incident from what he heard from another person, cannot be considered as evidence.
3. Opinions or inventions that witnesses obtain from their thoughts are not considered witness statements. In accordance with the explanation in Article 185 paragraph (5).

So it is based on the major premise contained in the provisions of Article 1 number 27 in conjunction with the explanation of Article 185 paragraph (1) of the Criminal Procedure Code which is connected to the minor premise as a legal fact contained in the Batang District Court Decision Number 14/Pid.Sus/2015/PN.Batang, the statement of the witness testimonium de auditu, namely witness Zamroni, the victim's father, has been presented. . The witnesses gave statements based on information or statements from other people, namely from the victim witness and from the defendant, based on the witnesses' own conclusions that a criminal act of sexual immorality or sexual intercourse had occurred against the victim witness and the defendant was the perpetrator. Based on the provisions of the Criminal Procedure Code, presenting information from a witness regarding a criminal incident that he did not hear himself, did not see himself and did not experience himself by stating the reasons for his knowledge, does not include witness information obtained from other people or testimonium de auditu. Therefore, it is not in accordance with the provisions of Article 1 number 27 in conjunction with the Elucidation of Article 185 paragraph (1) of the Criminal Procedure Code.

Based on Constitutional Court Decision Number 65/PUU-VIII/2010, reforms were made relating to Article 1 points 26 and 27 of the Criminal Procedure Code. The development of expanding the definition of witness as intended in the Constitutional Court Decision is "Article 1 number 26 and number 27; Article 65; Article 116 paragraph (3) and paragraph (4); and Article 184 paragraph (1) letter a of Law Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) are contrary to the Constitution of the Republic of Indonesia of 1945 throughout the meaning witnesses in Article 1 points 26 and 27; Article 65; Article 116 paragraph (3) and paragraph (4); Article 184 paragraph (1) letter a of Law Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209), is not interpreted to include "persons who can provide information in the context of investigation, prosecution and trial of a criminal act that he does not always hear about, see for himself and experience for himself"; in Article 1 number 26 and number 27; Article 65; Article 116 paragraph (3) and paragraph (4); Article 184 paragraph (1) letter a of Law Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) does not have binding force as long as the meaning of witness in Article 1 point 26 and number 27; Article 65; Article 116 paragraph (3) and paragraph (4); Article 184 paragraph (1) letter a of Law Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209), is

not interpreted to include "persons who can provide information in the context of investigation, prosecution and trial of a criminal act that he does not always hear about, see for himself and experience for himself."

Based on the statement above, the extension in Constitutional Court Decision 65/PUU-VIII/2010 states that the definition of witness testimony as evidence is testimony from a witness regarding a criminal incident that he himself heard, saw for himself, and experienced for himself by stating his knowledge, as well as The definition of a witness is testimony in the context of investigation, prosecution and trial of a criminal act which he does not always hear for himself, see for himself and experience for himself.

Based on Decision Number 14/Pid.Sus/2014/PN.Batang, in the evidentiary process of examining witnesses at trial, 9 (nine) witnesses were presented. Based on the testimony of witness Zamroni who is a witness from the public prosecutor, witness Zamroni and the victim's father did not directly see the incident of sexual abuse committed by the defendant. And testimony from witness Darsono, who is the victim's father, was that witness Dewi Isnaini Septiana told of an incident experienced by witness Dewi Isanini Septiana where witness Dewi Isnaini Septiana apart from being fucked by witness Zamroni, witness Zamroni was also sold to the defendant to be fucked in exchange for money from the defendant.

The presence of a witness testimonium de auditu at the trial in a case of sexual abuse committed by the defendant is not in accordance with Article 1 point 27 of the Criminal Procedure Code which states that a witness statement is one of the pieces of evidence in a criminal case in the form of a statement from a witness regarding a criminal incident that he himself heard, which he see it for yourself, and experience it for yourself by stating the reasons and knowledge, because basically testimony obtained from other people or testimonium de auditu testimony, the Criminal Procedure Code clearly states that testimonium de auditu is not valid evidence, there have been developments after the decision of the Constitutional Court (MK). ) there is an expansion of the meaning of witness expansion, a witness's statement regarding a criminal incident that he did not always hear for himself, see for himself and experience. It also depends on the extent to which the testimony given is relevant to the case at hand, in relation to other evidence, the judge is free to assess the witness' testimony. Witness Zamroni's statement stated that the witness asked the defendant and the victim witness whether they had had sexual intercourse with the victim witness, and the defendant answered that they had. And testimony from witness Darsono, who is the victim's father, is that witness Dewi Isnaini Septiana told of an incident experienced by witness Dewi Isanini Septiana where witness Dewi Isnaini Septiana apart from being fucked by witness Zamroni, witness Zamroni was also sold to the defendant to be fucked in exchange for money from the defendant. So based on this information, witness Zamroni and witness Darsono, the victim's father, even though they did not directly see the incident of sexual intercourse or obscene acts committed by the defendant. Giving information at trial that could mean that sexual intercourse occurred between the two of them.

## **CONCLUSION**

Based on Decision Number 14/Pid.Sus/2015/PN.Batang, the suitability of presenting testimonium de auditu witnesses at trial in cases of sexual abuse committed by the defendant is not in accordance with Article 1 point 27 in conjunction with the Elucidation of Article 185 paragraph (1) of the Criminal Procedure Code which states that witness testimony is one of the pieces of evidence in a criminal case in the form of testimony from a witness regarding a criminal incident that he himself heard, saw for himself, and experienced for himself by stating his reasons

and knowledge. Because basically testimony obtained from other people or testimonium de auditu testimony in the Criminal Procedure Code expressly states that testimonium de auditu is not considered valid evidence. However, based on Constitutional Court Decision Number 65/PUU-VIII/2010, there is an expansion of the meaning of a witness's statement regarding a criminal incident that he did not always hear for himself, see for himself and experience. It also lies in the extent to which the testimony given is relevant to the case being examined after being connected to other valid evidence and evidence.

Evaluation and evidentiary strength of the testimony of the testimonium de auditu witness as evidence that has value and is valid in court as evidence of guidance, the testimony of the testimonium de auditu witness can be used as evidence, there must be a strong reason to believe the truth of the witness testimonium de auditu, by because witness testimony testimonium de auditu can be used as an indication, if the witness statement is reliable, reasonable, and the witness statement can be recognized as indirect evidence. However, the strength of independent evidence is not binding and decisive for the judge. The judge is not bound by the strength of the strength value contained in the testimony of the witness testimonium de auditu. And in this case the judge is free to assess the truth of the testimony of the witness testimonium de auditu. Regarding the testimony of witness Zamroni in the case of child molestation, Decision Number 14/pid.sus/2015/PN.Batang as valid evidence and has the power of proof as a guide in accordance with the provisions of Article 184 paragraph (1) letter d in conjunction with Article 188 paragraph (1) KUHAP, because the testimony of Zamroni and witness Darsono, who is the victim's father, even though he did not see the defendant's actions directly, gave testimony based on statements from the defendant as well as from the victim and the victim's witness stated to witness Zamroni that he had committed sexual intercourse but it was not proven, according to the facts revealed At trial it was proven that the defendant had committed sexual abuse against a child

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