



## Juridical Testimony *Testimonium De Auditu* And *Unus Testis Nullus Testis* In The Disclosure Of Criminal Offenses To Children (Decision study number 260/Pid. Sus/2017/Gns)

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### Abstract

This study aims to determine how the utilization of the *Testimonium De Auditu* testimony and the *Unus Testis Nullus Testis* can be legally justified in the disclosure of the crime of sexual abuse of children. This legal research method is normative or doctrinal legal research. The main data source is secondary data, which includes primary legal materials, secondary legal materials and tertiary legal materials. Data analysis uses data analysis techniques that are legal interpretations so that conclusions that are objective and systematic are obtained as answers to the problems studied. The results showed that the testimony of *Testimonium De Auditu* and *unus testis nullus* can be used to reveal criminal acts with additional evidence, in order to increase the judge's conviction to issue a decision.

**Keywords:** Witness; *Testimonium De Auditu*; *Unus Testis Nullus Testis*; Criminal Offence Against Child.

### I. Introduction

Criminal law enforcement in Indonesia is governed by law number 8 year 1981 concerning Criminal Procedure Law (KUHAP). The purpose of criminal law is to seek material truth or at least to approach material truth. Material truth is complete truth in a criminal case. A criminal investigation is initially a criminal offence or a criminal act or criminal event, i.e. a crime or offence. This can be seen from the various efforts undertaken by law enforcement in obtaining the necessary evidence to uncover a criminal case. Obtaining the evidence is done at the preliminary examination, such as investigation and prosecution and at the stage of the trial. According to law No. 8 of 1981 on Criminal Procedure Law (KUHAP) in article 184 clause (1) which mentions the legitimate proof tool is witness information, expert information, letters, instructions, and information of the defendant.

The proof of criminal proceedings is aimed at adding confidence to a criminal event in order to prove its truthfulness. The criminal justice system in Indonesia in KUHAP consists of subsystem which is the stage of the process of resolving the case, subsystem

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of investigation carried out by police, prosecution subsystem executed by prosecutors, subsystem of examination in court administered by court, and subsystem of court decision executed by prosecutors and Correctional institution. The witness is essentially a valid instrument of evidence when the information given at the Court of trial has a purpose to give information to the judges, prosecutors, and advocates.

According to the legal provisions of the criminal event concerning the witness stipulated in article 1 Figure 26 of the CRIMINAL code, The witness is: "The person who can provide information for the sake of the investigation, prosecution, and the judiciary about a criminal matter that he heard himself, he saw himself, and he experienced himself". The witness of the witnesses is governed in article 1 of the number 27 of the Criminal Code, the witness information is "Some instrument of evidence in the case of a crime which is a description of the witness of a criminal event that he heard himself, he saw himself and experienced himself by mentioning The reason of his knowledge". Give a witness in this regard based on what happened and seen it directly. The description of the witness itself also gets a guarantee by committing the oath of witness to the testimony to be given.

When examining the definition of witnesses according to the criminal CODE, it becomes a serious question when a criminal offence is only known to one person or one person telling others who do not see, hear, experience themselves or are known by witnesses of *Testimonium De Auditu* And *unus testits nullus testes*. When this concept is confronted by a criminal offence case against the child in the ruling number 260/Pid. Sus/2017/Gns which presents a witness who witnesses do not see, hear, experience themselves. Thus, from this case there is a question that is how the utilization of the testimony of the *Testimonium De Auditu* and the testimony Of The *unus testicular nullus* can be justified in a juridical crime in the disclosure of the criminal offense to the child.

There is one thing that is found from the progressive law, that is when determining or giving criticism to the legal subject, *person in law*. When the mention of the diction of ' whosoever ' will be set and covers everyone, when it is reviewed from the genealogical law, the so-called ' whosoever ' is adult, *heterosex*, rational, and who has the *property*. So since the beginning of law can be against the legal subject of men. As traced in a historical sheet, the law lives in a Delik. Or it can be said Delic is his DNA law. Therefore, the

proceeding from the first time was made based on the male conflict only. In other words, if there is a conflict involving women, the law seems to be ' illiterate ' when there are people who propose their status and rights. Hence the next law activates a new subject, i.e. women. Immediately after developing the thought of *feminist legal theory* and the movement that championed women's status<sup>1</sup>.

As an illustration in rape for example, the evidence is done unreasonably, because incomprehension that inside the female body, there are all sorts of injustices that operate perfectly. On the wider aspect, normative women can indeed align themselves with men. But when from is more profound, the fact that women can only imagine it all because of the *glacy of link* phenomenon. There is a glass ceiling (*glacy link*), which is intangible *culture*, which in turn does not allow women to reach a position, a social status, or a degree that is balanced by the legal subject of men<sup>2</sup>. So the child, especially the woman who is the subject of law that is vulnerable to the criminal offense that happened to him.

## II. Method

Legal Research used is normative legal research or also called doctrinal law research. Doctrinal law research is research conducted by examining the library material consisting of primary legal material, skunder legal material. According to Peter Mahmud Marzuki, research related to law (*legal Research*) is obvious that the research is normative<sup>3</sup>. The study was conducted to know in a juridical testimony of *Testimonium De auditu* and testicular *nullus* testicles in the disclosure of criminal offense to the child. The Data will be used to identify and analyze the problem to achieve a workaround. The approach used in this research is a case approach examined by criminal offenses on the child in the case of number 260/Pid. Sus/2017/Gns. Case approach was carried out with a ratio of *decidendi* or reasoning by examining the case relating to the issues faced which

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<sup>1</sup> Muhammad Rustamaji. 2017. *Pilar-Pilar Hukum Progresif Menyelami Pemikiran Satjipto Rahardjo*. Yogyakarta : Thafa Media. Hal 9

<sup>2</sup> *Ibid.*, Hal 10-11

<sup>3</sup> Peter Mahmud Marzuki. 2019. *Penelitian Hukum*. Jakarta : Kencana Prenadamia Group. Hal 55-56

had been the ruling of a court which had remained the legal force of the Court's judgment to an award<sup>4</sup>.

### III. Main Heading of the Analysis or Results

#### A. *Analysis of testimony Testimonium De Auditu*

Evidence in article 184 paragraph (1) of witness, information, letter, instruction, and description of the defendant. According to article 1 number 27 of THE Criminal Code referred to by the witness is that some instrument of evidence in a crime that is a description of the witness of a criminal event that he heard himself, he saw himself and he experienced himself by mentioning the reason of his knowledge. The description of the witness in the criminal CODE is obvious that the witnesses must hear, see, and experience themselves against a criminal event.

Witnesses who see directly the occurrence of a criminal offence are referred to by the term *eyewitness*. According to Clifford and Davis there were three phases in the investigation to identify eyewitnesses in finding suspects. In the first phase, eyewitnesses told all the information he saw and other information related to crime. In the second phase the police searched for suspects based on information obtained from eyewitnesses and a track record of potentially suspect people. In the third phase the police asked eyewitnesses to identify the perpetrators directly<sup>5</sup>.

The description of witness *Testimonium De Auditu* can actually be used as a means of evidence in criminal events. The judge may consider when the witness *de auditu* information can be used as a means for such evidence or dispute. If according to the convening judge apparently the third party witness information is *reasonable* enough to be trusted, such witness information is excluded From the *Testimonium De auditu*. This means that such witness information can be recognized as a tool for evidence in criminal events. Based on the ruling on the Constitutional Court No. 65/Puu-VIII/2010 The Constitutional Court ruled that the understanding of the witnesses in article 1 figure 26 and the number 27 Kuhap, not to be interpreted, including the person who can provide

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<sup>4</sup> *Ibid.*, Hal 133-134

<sup>5</sup> Eddy O.S Hiarij. 2012. *Teori & Hukum Pembuktian*. Jakarta : Erlangga. Hal 109

information in the framework of the investigation, prosecution, and trial of a criminal act that he did not always hear himself, and he saw himself<sup>6</sup>.

Explanation of Article 185 paragraph (1) KUHAP states that in the testimony information does not include information obtained from other persons or *Testimonium de auditu*. There is a boundary of the value of a self-standing testimony of a witness, the so-called *Unus testicular nullus testicle* (one witness not a witness). This can be seen in article 185 paragraph (2) of the criminal CODE stating that the description of a witness alone is not sufficient to prove that the defendant was guilty of the deed he was accused of. 8 in paragraph (2) it does not apply if there are other legitimate evidence tools. The exception of one witness is applicable if there is another valid instrument in accordance with the proven proof system<sup>7</sup>.

The testimony Of *Testimonium De auditu* expressly IN The Criminal Code is not a valid instrument of evidence, but based on the ruling of the Constitutional Court NO. 65/Puu-VIII/2010 which decides the witness not to be interpreted including the person who can provide information in the framework of the investigation, prosecution, and judiciary of a criminal offence which he does not always hear himself, he saw The above cases have presented Partiyem witnesses and witnesses Marman Subari who gave his description after being told by the witness of Azis that the witness of Azis caught the defendant with SDR Kharisma who do not wear pants. And Marman's witness reported to the police.

The development of the witness definition and description of the witness as referred to in article 1 Figure 26 juncto article 1 Figure 27 Juncto article 65 juncto article 116 paragraph (3) Juncto article 116 paragraph (4) Juncto article 184 paragraph (1) letter a KUHAP expanded based on the decision of the Constitutional Court (MK) number 65/PUU-VIII/2010. Expanding the meaning of witnesses based on an application submitted by Yusril Ihza Mahendra. Submitted an application which was later listed in the Committee of the Constitutional Court (hereinafter the Court Clerk) on Tuesday, October 19, 2010, with the registration of matters No. 65/Puu-VIII/2010, which was corrected and accepted in the Court's Committee on December 2, 2010, elaborating on

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<sup>6</sup> Asprianti Wangke, 2017, "Kedudukan Saksi De Auditu Dalam Praktik Peradilan Menurut Hukum Acara Pidana", *Jurnal Lex Crimen* Vol VI No 6. Hal 4

<sup>7</sup> Andi Halaludin, 2014, "Keyakinan Hakim Terhadap Keterangan Saksi Testimonium De Auditu (Witness Statement Of Faith Judge De Auditu Testimonium)", Vol 3 No 4. Hal 12

the following things: applicants applying for the Constitutional Court (MK) to conduct tests on article 1 Figure 26 and number 27 Juncto article 65 juncto article 116 paragraph (3) and paragraph (4) Juncto article 184 paragraph (1) letter A of Law number 8 year 1981 on the Criminal Program Law (KUHAP) of article 1 paragraph (3) and article 28d paragraph (1) Constitution 1945<sup>8</sup>.

The testimony of *Testimonium De auditu* must be supported with other proof tools. This case added another proof tool such as the *Visum Et Repertum* result number: 440/59/WDI026/2017 and the suspect's confession. So the judge uses witnesses for the guidance and conviction of the judge that the defendant is guilty. Witness *Testimonium De Auditu* can be used as an additional proof tool in a case when it has a relationship/relevance with other proof tools.

### *B. Analysis of Unus Testis Nullus Testis*

The testimony of the *Unus Testis Nullus Testis* in the KUHAP ARTICLE 183 Kuhap explained that the judge must not impose a criminal to a person, except when with at least two legitimate proof tools he gained the belief that a criminal offence really occurred that he was guilty of doing so. This article shows that the judge in adjudication of a criminal offence must be a minimum of two legitimate evidence in article 184 of the KUHAP, accompanied by a judge's conviction.

The principle of one witness is not a witness or *Unus Testis Nullus Testis* in the kuhap contained 185 verses (2) which states "the description of a witness alone is not enough to prove that the defendant is guilty of the deed he was accused of". The further provisions of Article 185 paragraph (3) state "The provisions referred to in paragraph (2) shall not apply if accompanied by a valid instrument of evidence". The *Unus Testis Nullus Testis* testicular is related to the minimum principle of proving the two instruments of evidence. The description of a witness is not enough to prove this guilty defendant can

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<sup>8</sup> Frans Sayogie, 2017, "Pemaknaan Saksi dan Keterangan Saksi dalam Teks Hukum Analisis Putusan Mahkamah Konstitusi Nomor 65/PUUVIII/2010", Vol. XXIII No.1. hal 6-7

be interpreted *a contratio* that is a description more than a witness is enough to prove that the defendant was guilty during the belief of judges<sup>9</sup>.

The theory of the law of the criminal event adheres to a principle about witnesses, the *Unus Testis Nullus Testis*. Literally the *Unus Testis Nullus Testis* means a witness is not a witness. In order to prove a legal event, both in the criminal and civil contexts, it takes at least two witnesses. The principle requires a minimum of two witnesses to the process of proving the law. In order to achieve justice, law enforcement officers must undertake a breach of this principle when dealing with a matter of only one witness<sup>10</sup>.

Article 185 paragraph (2) KUHAP that the description of a witness alone is not enough to prove that the defendant was guilty of the deed he was being accused of (*Unus Testis Nullus Testis*). So to prove the defendant's fault then must have at least two proof tools based on the applicable law. In this section we want to explain that even though there are two or more witnesses as described in the above points, but two or more witnesses that exist this gives his or her testimony in front of the court but their information is stand alone or different from one another and does not give any relation between one with the other so even though quantitatively the information has fulfilled the provisions as referred to in article 183 KUHAP, the information can not be considered as a witness that satisfies the proof of evidence. It is therefore necessary to see that in addition to "quantitative" it is worth noting also "qualitative" from witness description<sup>11</sup>.

Witness in the verdict of the state court No. 260/Pid. Sus/2017/Gns is a testimony of *Unus Testis Nullus Testis* because the witness of charism Binti Dasirin is the victim. Another witness of the witnesses is the Partiyem and the witness Marman Subari, both of whom are witnesses of the *Testimonium De auditu* After giving the information that was notified by an an-witnessed. other evidence in this case is evidence Of *visum Et Repertum* Number: 440/59/WD-1026/2017 and also the defendant's confession.

*Visum Et repertum* has important functions and roles in the judicial system in Indonesia. It

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<sup>9</sup> Eddy O.S Hiariej. 2012. *Teori & Hukum Pembuktian*. Jakarta : Erlangga. Hal 105

<sup>10</sup> Mohammad Nurul Huda, 2017, "Pentingnya Alat Bukti dalam Pembuktian Minim Saksi The Importance of The Evidence in Proof of Minimal Witness, *Jurnal Hukum dan Keadilan* Volume 1, Nomor 2. Hal 8

<sup>11</sup> Nanang Desga Nilwa, 2013, "Pembuktian Kesaksian Yang Berdiri Sendiri Dalam Perkara Pidana", *Jurnal Ilmiah*. Hal 12

can be seen from the position of experts in the criminal justice in Indonesia. Provisions that are the basis of this reference can be seen from the provisions of KUHAP article 179, article 180, article 184 paragraph (1) Letter B, article 186, article 187 letter C. According to H. Nurbama Syarief, the *Visum et* investigation is the result of examination by a physician, about what he saw, what he found, and what he heard, in connection with someone who is injured, a person who is disturbed by his health, and someone who The examination is expected to reveal the causes of all of them in relation to the possibility of a criminal offence. The role of *Visum Et Repertum* made by expert witnesses is very helpful in court proceedings, especially when it comes to only minimal evidence.

#### IV. Conclusion

##### 1. Conclusion

Based on what is outlined in the problem formulation, the results of research and discussion conducted by the author, it can be formulated two conclusions as follows:

1. The application of the principle *Testimonium de auditu* by the Assembly of judges of the District Court of Mount Sugih is used as a guideline to reveal criminal offenses to children. Witness *Testimonium de Auditu* can be used as an additional proof tool when supported by other evidence tools. Another supportive instrument was the result of the *Visum Et Repertum* and the defendant's confession. So that the court of judges of the Mount Sugih State Tribunal sentenced the defendant Rebo Bin Porso.
2. The strength of the witness evidence that is categorized as an *Unus Testis Nullus Testis* testicular in criminal examination of the fornication of the child with the accused Rebo bin Porso in the District Court of Mount Sugih, witnesses of the victim Kharisma Binti Dasirin bear his testimony with the support of the Witnesses Partiyem

##### 2. Suggestion

1. The testimony of *Testimonium de Auditu* is useful for adding a clue by a judge over the event of a criminal offence. The judges can listen to the introduction to assess the extent to which the witness *Testimonium de Auditu* has a relationship with other evidence tools.

2. The judge in applying the *Unus Testis Nullus Testis* is necessary to be done with full care and caution. The judge must perform an assessment of the witness material with respect to the provisions of the evidentiary and other evidence set out in the criminal CODE.

## V. Acknowledgments

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