Expert’s Testimony Evidence in the Criminal Justice Process in Indonesia.


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Abstract: This study aims to analyze the position of expert testimony as evidence in the criminal justice process. The type of research in this research is normative. The nature of the research is descriptive. The results of his research are that the position of expert testimony as evidence is a gate, especially for investigators in determining whether this gate will be opened or not or whether it will last first. According to his expertise, an expert explains the conclusions from a known situation. Thus, the substance of the expert's statement becomes the investigator's authority to evaluate it at the investigative level. Because, sometimes in the investigation process expert testimony is sidelined because the witness testimony is more dominant, of course, this will affect the process of proving the trial.

Keywords: Evidence; Expert Statement; Criminal act.
1. INTRODUCTION

Proof in criminal procedural law is an attempt to obtain information through evidence and evidence to obtain a conviction as to whether the criminal act being charged is true or not and to find out whether the defendant was guilty. According to Bambang Poernomo, proof according to law is a process to determine the substance or nature of the facts obtained through proper measurement with a logical mind on facts in the past that are not clear into clear facts about a criminal case.¹

When a criminal act is suspected, a series of actions called investigations and investigations are required which are carried out by the Indonesian National Police or other law enforcement agencies that are legal according to law. The investigation is to ensure that an event or an act is included in the category of a crime, while the investigation is a series of follow-up investigations to clarify the alleged crime, and find evidence and suspects. In the process of determining a suspect, several principles guide investigators, such as the presumption of innocence; equal treatment of everyone before the law without discriminating in treatment; arrest, determination of suspect, detention, search, and confiscation shall only be carried out based on a written order. These principles serve as a guide in protecting human rights against someone suspected of committing a crime, therefore investigators carry out a series of examinations of several people such as reporters, reported parties, witnesses, experts, and letters/documents objectively.²

One of the pieces of evidence that can be used in the evidentiary process at trial is expert testimony. In the legal context, expert testimony is in the form of information from someone who has special expertise on a matter that is being disputed or being prosecuted to shed light on a legal event. In criminal cases, expert testimony has the same position as other evidence as referred to in Article 184 paragraph (1) letter b of the Criminal Procedure Code. Thus, the expert's testimony becomes a stand-alone piece of evidence which, when added to one other piece of valid evidence, is fulfilled evidence or minimum evidence to convince the judge that an offense has occurred and it is the defendant who is guilty of committing a crime.

In addition, based on Article 25 paragraph (2) of the Republic of Indonesia Chief of Police Regulation Number 6 of 2019 concerning Investigation of Criminal Acts, before someone is named a suspect based on 2 valid pieces of evidence, a case title must be held first, unless caught in the act. Thus, this case title will assess evidence, the procedures carried out by the investigation, especially in the process of this case title will also be attended by oversight organs from the internal Police (Article 32 paragraph (2)), the Republic of Indonesia Chief of Police Regulation Number 6 of 2019.

Expert testimony can be provided by experts at the request of investigators, at the request of the prosecutor, or the request of the accused/his attorney. The expert will provide information based on his expertise objectively and impartially. Expert testimony can also be taken into consideration by investigators or not taken into consideration in determining someone as a suspect. Likewise in court,

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² https://business-law.binus.ac.id/2021/03/31/keterangan-ahli-dalam-tingkat-penyidikan-dugaan-tindak-pidana/ in acces 03 Agustus 2022
expert testimony is not binding for judges in legally and convincingly determining a defendant to have committed a crime as charged by the public prosecutor.

Expert testimony is very important in helping to find the truth about the facts that have happened. Even though the expert did not see, experience, or hear directly a criminal incident, his testimony is often highly relied upon by law enforcement. Expert opinion is often used as a reference to determine a suspect, acquit, or convict a defendant. The position of an expert is so important that in criminal cases that attract public attention, the presence of an expert is often expected.³

Everyone should understand that expert testimony has the same position of evidence as other evidence. The judge is not bound by the information given by the expert. However, in various cases that are shown to experts, it has various implications. An expert who provides information should be respected, appreciated, and protected. Because he has been able to assist law enforcers in explaining a case according to his expertise. So in this provision, there is no guarantee for experts who provide information in criminal cases.⁴ Based on this, the authors try to analyze the process of proving a crime and the position of expert testimony as evidence in the criminal justice process.

2. METHODS

This study uses a type of normative legal research. The nature of the research is the nature of descriptive research. The type of research in this paper is about the blurring of norms regarding the position of expert testimony. The approach used in this legal research is the statutory approach and the conceptual approach. The legal material collection technique used is Legislation and Bibliographical Data by reading, summarizing, and reviewing library materials related to research in the form of literature and laws and regulations that are relevant and directly related to the subject matter. After all primary and secondary legal materials have been collected, the processing of legal materials and technical qualitative analysis is carried out.

3. RESULTS AND DISCUSSION

a. The Process of Proving a Criminal Act in the Indonesian General Court

The process of proving is felt to experience difficulty and the imperfection of the law is illustrated from the start. We ask how to know a fact or event that occurred and who is responsible for an event or legal event. The first thing to know about the incident is to examine people and things that can show what the incident happened to like. The examination is carried out on people who experienced, witnessed, and heard the event and on items that can help show how the incident happened. This system determines the existence of evidence that is determined in a limited manner by law and is supplemented by the conviction of the judge obtained and the existence of the evidence.

³ https://www.hukumonline.com/berita/baca/lt57bc379b6a154/kedudukan-ahli-dan-pendapatnya-dalam-perkara-pidana/. In acces 03 Agustus 2022
The application of evidentiary law by the evidentiary system will become a filter to determine whether the accused has committed a crime and can be held responsible for the criminal act charged. From the results of evidence based on procedural law and loaded with logical reasoning, legal facts or juridical facts will be obtained, these facts will then be given juridical values and argued by the Public Prosecutor in the lawsuit (requisitor) and by legal advisors through defense (plea). And finally, the judge, both the legal facts, charges, and defense will be assessed and considered as described above, then a decision will be made whether the charges against the defendant are proven or not. The application of evidentiary law based on a proof system that is carried out by statutory legal provisions is supported by adequate legal facts, and is carried out by a transparent judicial process with high accountability, will be a means to achieve material truth, which is the goal of the criminal justice process.

In carrying out the entire legal process above, the process must be carried out with a holistic approach or as a whole given attention and assessed through the provision of arguments. So, from acceptance to evaluating evidence, it must be done with arguments, for accepting evidence, we have seen in chapter III, specifically for evaluating evidence, this must also receive special attention because problems often arise, that is, after all the evidence has been received, each gives different judgments on the same fact, but that is commonplace. But if no reasons are given or reasoning then that is unusual. To avoid a long debate, all parties should adhere to the principles of proof based on accurate and correct thinking and evaluation.

This needs to be confirmed through the establishment or combination of evidence systems. The evidentiary law itself regulates the system adopted in proving types of evidence that are valid according to law, requirements, and procedures for submitting evidence, as well as the authority of judges to accept, reject and assess the evidence.

Returning to the basic theory of proof, that is, in the science of law, several evidentiary systems are known, namely: First, inner conviction, This evidentiary system in determining whether the accused is guilty or not is solely based on the conviction of the judge. The judge is not bound by evidence and is free to determine whether the accused is guilty or not. This system is very subjective. Second, Reasoned belief In this evidentiary system, judges are also not bound by evidence and are free to determine evidence, the judge's conviction still plays a role, but the judge's belief must be supported with clear reasons. The judge is obliged to provide reasoning or describe the reasons for his belief. The reasons given must be explained rationally. Third, Positive Proof under the Law, in this system, the judge determines whether the defendant is guilty or not based solely on evidence. The role of the judge's belief here does not exist as long as the terms and conditions of proof have been fulfilled the judge will determine the guilt of the defendant. Fourth, Negative Proof According to the law, this system requires that in determining whether the accused is guilty or not, legal evidence is required that
has been determined by law. And there is a Judge's Confidence based on valid evidence.

How we can arrive at the truth of the discovery of material truth, is to develop together holistically as a whole other than setting the rules, then we must also use a holistic approach in providing an assessment of evidence through the use of basic concepts in proof. These basic concepts are used as the basis for the concepts of truth, relevance, fact, probability, generalization, and argumentation.

Through the decomposition of these basic concepts, with proper use, it is hoped that it will become a method that can be used to support the integration of the evidentiary system according to the law in a negative and conviction raisonnable.

So that Law Enforcement Officials in conducting evidence that can be done is to collect all evidence by grouping supporting evidence (to support affirmative or positive) against allegations and evidence that drop or negate (to negate affirmative or negative) against allegations and then compare with all possibilities and doubts, then determine which evidence is stronger in reaching a conviction. Metaphorically\(^5\) maybe we can describe the strength of proof the same as a rope consisting of a collection of small ropes, the more groups of ropes that are joined together, the stronger the rope is. Even if there is a rope that will pull in the opposite direction, again depending on how many bundles of rope are joined on that side. But which rope is stronger sometimes does not depend on the number of ropes that are joined, but also on the quality of the ropes that are joined.

### b. Position of Expert Statement as Evidence in Criminal Justice Processes

In principle, the expert's testimony as evidence in criminal cases in the examination of criminal cases is used to support one of the elements of a crime that requires special expertise. The function of expert testimony in a criminal examination can be seen when the public prosecutor proves his indictment against a defendant during a trial. Even though an indictment prepared by the public prosecutor is based on evidence obtained from the results of an investigation, it does not mean that what is formulated and described in the indictment is correct and is not questioned or re-examined.

The proof is the central point of examining cases in court proceedings. The proof is provisions that contain outlines and guidelines regarding ways justified by law to prove the guilt charged against the accused, through means of evidence justified by law for further use by the judge in proving the defendant's guilt. Therefore, judges cannot use evidence that is contrary to the law, because the

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\(^5\) It's interesting to read about quotes about metaphors as expressed by Aristoteles in *De Poetica (Poetics)*, (trans. Ingram Bywater) Richard McKeon, Ed., *The Basic Works of Aristotle*, Modern Library, New York, 2001, page. 1479, yaitu “...The greatest thing by far is to be a master of metaphor. It is the one thing that can not be learned from others; and it is also a sign of genius, since a good implies an intuitive perception of the similarity in dissimilar.”
truth of a decision must be tested using evidence that is legally valid and has the power of proof attached to each piece of evidence found.\(^6\)

In the elucidation of Article 183 of the Criminal Procedure Code, it is stated that the legislators have made a choice that the most appropriate evidentiary system in the life of law enforcement in Indonesia is a negative statutory evidentiary system, semi-upholding justice, truth, and legal certainty. Because in this evidentiary system, there is an integrated unity of combination between the conviction-in-time system (a system of proof that only relies on the judge's conviction) and the positive statutory proof system (positief wettelijk steel).\(^7\)

One of the valid pieces of evidence in examining a criminal case according to Article 184 of the Criminal Procedure Code is expert testimony. Expert testimony is information given by a person who has special expertise on matters needed to shed light on a criminal case for examination. Legal evidence in examining a criminal case according to Article 184 of the Criminal Procedure Code is expert testimony. Expert testimony is information given by a person who has special expertise on matters needed to shed light on a criminal case for examination.

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Expert testimony in the examination of a criminal case is very interesting to discuss because, in the investigation of criminal acts, Article 120 of the Criminal Procedure Code determines:

1. If an investigator deems it necessary, he may ask for the opinion of an expert or person with special expertise.

2. The expert takes an oath or makes a promise before the investigator that he will provide information to the best of his knowledge, unless due to his dignity, job, or position which obliges him to keep secrets, he may refuse to provide the information requested.

Expert testimony as a means of evidence as stipulated in the Criminal Procedure Code is not the only means of evidence that stands alone. Expert testimony coupled with other evidence. It is impossible to determine a suspect based on expert testimony alone, it is ensured that the investigator has other valid evidence before naming someone as a suspect. In addition, based on Article 25 paragraph (2) of the Republic of Indonesia Chief of Police Regulation Number 6 of 2019 concerning Investigation of Criminal Acts, before someone is named a suspect based on 2 valid pieces of evidence, a case title must be held first, unless caught in the act. Thus, this case title will assess evidence, the procedures carried out by the investigation, especially in the process of this case title will also be attended by oversight organs from the internal Police (Article 32 paragraph (2)), the Republic of Indonesia Chief of Police Regulation Number 6 of 2019.

The role of the Expert Statement as one of the valid pieces of evidence in addition to other pieces of evidence will also determine the confidence of law enforcement officials and the scope of the judiciary by fulfilling the evidentiary rules, namely having to get the support of one or several other pieces of evidence so that the strength as a piece of evidence becomes perfect by accommodating strengthening Expert testimony position.

Experts in providing information basically must have expertise through their professionalism. The indicators that a person can be said to be an expert and can be asked for information are:

1. A person who has special knowledge in a certain field of science so that the person is competent in that field of knowledge;

2. A person is said to have expertise in a particular field of knowledge in the form of skills due to training and experience; and

3. Information and explanations given by an expert can help find facts beyond the general knowledge capabilities of ordinary people, which of course are adapted to special knowledge, skills, training, and safeguards.

So, if we draw the red thread, the fact that the presence of expert testimony is a gate, especially for investigators in determining whether this gate will be opened
or not or whether it will survive first. What an expert explains is the conclusions from a known situation according to his expertise. Thus, the substance of the expert’s statement becomes the investigator’s authority to evaluate it at the investigative level. Because, sometimes in the investigation process expert testimony is sidelined because the witness testimony is more dominant, of course, this will affect the process of proving the trial. So, through this research, to be accommodated, the authors took steps, namely proposing strengthening the position of expert testimony as evidence, especially at the investigation stage where the status would be elevated to the investigation. The revision of the Regulation of the Head of the State Police of the Republic of Indonesia Number 6 of 2019 concerning the Investigation of Criminal Acts must also be carried out as a form of embodiment of strengthening the position of expert testimony as evidence.

4. CONCLUSIONS

Proof in criminal cases is to seek material truth and to protect human rights. With at least two valid pieces of evidence, he gains confidence that a crime has occurred and that it is the defendant who is guilty of committing it (article 183 of the Criminal Procedure Code). The assessment of the evidence that is binding and has the strength of evidence is in Article 184 paragraph (1) of the Criminal Procedure Code. The position of expert testimony as evidence is a gate, especially for investigators in determining whether this gate will be opened or not or if it will survive first. According to his expertise, an expert explains the conclusions from a known situation. Thus, the substance of the expert’s statement becomes the investigator’s authority to evaluate it at the investigative level. Because, sometimes in the investigation process expert testimony is sidelined because the witness testimony is more dominant, of course, this will affect the process of proving the trial.

To be accommodated, the author tries to provide a solution, namely proposing to strengthen the position of expert testimony as evidence, especially at the investigative stage, where the status will be promoted to the investigation. The revision of the Regulation of the Head of the State Police of the Republic of Indonesia Number 6 of 2019 concerning the Investigation of Criminal Acts must also be carried out as a form of embodiment of strengthening the position of expert testimony as evidence. The proof is something that determines whether the person suspected of this crime is guilty or not. Law enforcement officials in the future can maximize the information from experts as a gateway in a proving process.
REFERENCES


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