

# STATUS OF THE VERBALISH WITNESS RECOGNITION TO VIOLENCE AGAINST SUSPECTS AS A TOOL OF EVIDENCE

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**Abstract:** In the examination of a criminal case trial requires several pieces of evidence as contained in the Criminal Procedure Code called KUHAP, such as: witness statements, expert statements, letters, instructions, and statements of the accused. Verbalized witnesses are not included in the KUHAP, but they often occur in criminal justice practices. This study aims to find out how the position of evidence in Indonesian criminal law and how verbal witness confessions can be used as evidence of criminal acts of mistreatment of suspects. This research is descriptive in nature, with a statutory approach, primary, secondary and tertiary legal materials and qualitative analysis is carried out systematically in order to obtain answers to problems, Witness statements are legal evidence as regulated in Article 184 paragraph (1) of Law Number 8 of 1981 concerning called KUHAP. A verbal witness is an investigative witness who is presented by a judge in a trial because the defendant withdraws the Minutes of Examination called BAP. The presence of this verbal witness was to prove the testimony of the defendant who said that during the investigation the defendant was under pressure or coercion. Verbal witness statements can be used as a judge's consideration in accepting the reasons for revocation of the BAP carried out by the defendant and the judge's considerations in making a decision. Moreover, verbal witness testimony was taken in a trial.

**Keywords:** Verbal Witness; Confession of Violence; Suspect; Evidence

## 1. INTRODUCTION

In carrying out criminal law in order to achieve the desired goals, procedural law is needed, namely a series of rules governing the procedures for submitting a case to a judicial body or court, as well as the ways in which judges make decisions. The procedural law regulates branches of law including criminal procedural law.

In the Guidebook for the Implementation of the KUHP it is stated that the purpose of the criminal procedure law is to seek and obtain or at least approach the material truth, namely the complete truth of a criminal case by applying the provisions of the criminal procedure law in a comprehensive manner. honest and precise with the aim of finding out who the perpetrators can be charged with committing a violation of the law. Next, ask for an examination and a decision from the court to find out whether it is proven that a crime has been committed and whether the accused person can be blamed. In order to prove whether or not the defendant committed the alleged act, a proof is required.

Law is divided into material law; consists of regulations that give rights and burden with obligations. formal law; legal regulations whose function is to implement or enforce material law or determine how to implement material law, as well as how to realize rights and obligations in the event of a violation of law or dispute (Mertokusumo, 2005, p. 127).

There are three main problems of material criminal law which lie in interrelated issues, namely: what acts should be punished; what conditions should be met to blame or be held responsible for someone committing the act; and what sanctions or punishment should be imposed on the person.

In proving, judges need to pay attention to the interests of victims, defendants, and society. The interests of the victim mean that someone who suffers because of someone else's evil act has the right to justice and care from the state. The public interest means that for the sake of public peace, every perpetrator of a crime must receive a punishment commensurate with his mistakes.

Proving means convincing the judge about the truth of the arguments or arguments put forward in a dispute, and proof is only needed during the trial process in court. Meanwhile, proving according to a juridical meaning means giving a sufficient basis to the judge in examining a case, to get the judge's conviction about the truth of events in a case.

In enforcing the law there are several stages that must be passed. Law enforcement in the criminal law court stages are in the form of the investigation stage,

the investigation stage, the prosecution stage, and the examination stage in court. The Investigation Stage is a series of investigative actions to seek and find an event that is suspected of being a criminal act, in order to determine whether or not an investigation can be carried out.

Investigators are bound by laws and regulations, and the provisions that apply in carrying out their duties. Even though investigators are bound by laws and regulations, and the provisions that apply in carrying out their duties, it does not rule out the possibility that investigators can violate their authority.

If an investigator does not have ethical investigative ethics in carrying out their duties, the investigator may take arbitrary actions that can create new problems. Article 7 Paragraph (1) of the Criminal Procedure Code, during the investigation stage, investigators have the authority to summon and examine suspects and other necessary witnesses.

The testimony of a witness is very important in the investigation and prosecution of criminal cases because a witness has first-hand information about a crime or dramatic event through their senses, for example sight, hearing, smell or touch and can help determine important considerations in a crime or events, so that witness testimony is needed in solving criminal cases.

In the Criminal Procedure Code itself there are no specific provisions regarding verbal witnesses, but the use of verbal witnesses is permitted under Indonesian law, as long as it remains within the corridors of existing law. The existence of verbal witnesses does not always have to be there, depending on the examination process in the court. If a defendant or witness withdraws his statement in the Minutes of Examination, the investigative witness or verbal witness is often summoned to court to provide information.

The background to the appearance of this verbal witness is that there is a provision in Article 163 of the Criminal Procedure Code which reads: "If the testimony of the witness at trial differs from the information contained in the minutes, the head judge at trial reminds the witness about this and asks for information regarding the differences that are recorded in the minutes trial examination." Therefore law

enforcement and prevention of violence perpetrated by investigative witnesses or verbal witnesses so that suspects admit their crimes or say according to the wishes of investigators are interesting to study.

## 2. METHODS

This research is normative legal, using a statutory regulation approach that focuses on primary legal material, namely Law Number 8 of 1981 concerning the KUHAP. The nature of qualitative descriptive analysis. Collection of legal materials is carried out by means of document studies (*library*), processing of legal materials is carried out by means of checking (*editing*), marking (*coding*), reconstruction, and systematizing. Analysis of legal materials was carried out qualitatively and comprehensively.

## 3. RESULTS AND DISCUSSION

### 3.1. Position of Evidence in Indonesian Criminal Law

Article 184 paragraph (1) of the KUHAP states that valid evidence is: witness statements, expert statements, letters, instructions and statements of the accused. In the criminal procedural law evidentiary system which adheres to the negative wettelijk system, only legal means of evidence according to law can be used for evidence. This means that outside of these provisions cannot be used as legal evidence.

In Article 184 paragraph (1) of the KUHAP, various types of valid evidence are regulated, namely:

1. Witness testimony. According to Article 1 point 27 of the KUHAP, witness testimony is one of the means of evidence in a criminal case in the form of a statement from a witness regarding a criminal event that he himself heard, saw, experienced himself by stating the reasons for his knowledge. In the event that a witness does not hear, see or experience the criminal incident himself, but he only gives opinions or conjectures derived from ideas, then this does not constitute witness testimony.
2. Expert testimony according to Article 1 Number 28 of the KUHAP what is meant by expert testimony is information given by a person who has special expertise

on matters needed to clarify a criminal case for the purposes of examination.

3. The legal basis regarding documentary evidence is contained in Article 187 letter b of the KUHAP, where basically the letter in question is a letter made according to the provisions of laws and regulations or a letter made by an official regarding matters included in the management for which he is responsible and which is intended to prove a situation.
4. Instructions, evidence of these instructions can only be obtained from witness statements, letters, and statements of the accused in Article 188 of KUHAP. This means both regarding actions, events or circumstances where there is a connection or agreement that is being trialed to indicate that a crime has occurred and who the perpetrators are.
5. Statement of the Defendant; explained in Article 189 of the KUHAP that what is meant by the defendant's testimony is what the defendant stated in court about the actions he committed or which he himself knew or experienced. The defendant in giving his statement as evidence at trial only included two things, namely, confession and denial of the crime he was charged with.

The KUHAP does not clearly state what is meant by evidence. However, Article 39 paragraph (1) of the KUHAP states what can be confiscated, namely:

- a. objects or claims of the suspect or defendant which are wholly or partly alleged to have been obtained from a criminal act or as the result of a criminal act;
- b. objects that have been used directly to commit a crime or to prepare it;
- c. objects used to obstruct the investigation of criminal acts;
- d. objects specially made or intended to commit a criminal act;
- e. other objects that have a direct relationship with the crime committed

In other words, objects that can be confiscated as mentioned in Article 39 paragraph (1) of the KUHAP can be referred to as evidence. In addition, the Hetterziene in Landcsh Regerment (HIR) also contains evidence. In Article 42 HIR it is stated that employees, officials or other authorities are required to look for crimes and violations

and then search for and seize items used to commit a crime as well as items obtained from a crime.

The elucidation of Article 42 HIR states that the items that need to be lagged include:

1. Items that are the target of criminal acts (*corpora delicti*),
2. Items that occur as a result of a crime (*corpora delicti*).
3. Items used to commit a crime (*instrumenta delicti*).
4. Items that can generally be used to incriminate or mitigate the guilt of the accused (*corpora delicti*).

Apart from the notions mentioned in the code of law above, the notion of evidence has also been advanced in doctrine by several legal scholars. It is said, evidence in a criminal case is evidence regarding where the offense was committed (object of the offense) and goods with which the offense was committed (tools used to commit the offense), including goods which are the result of an offense. Characteristics of objects that can be used as evidence:

- a. Is a material object.
- b. Speak for yourself.
- c. The most valuable means of proof compared to other means of proof.
- d. Must be identified with witness testimony and defendant's statement.
- e. These objects can provide information for the investigation of said crime, either in the form of pictures or in the form of sound recordings.
- f. Evidence which is supporting evidence has a very important position in a criminal case. But the presence of an item of evidence is not absolute in a criminal case, because there are several crimes which in the process of proving do not require evidence, such as the crime of verbal insult (Article 310 paragraph [1] of the Criminal Code).

When paying attention to the information above, there is no visible connection between the evidence and the evidence. Article 183 of the KUHP stipulates that in order to determine a sentence for a defendant, his guilt must be proven by at least two

valid pieces of evidence; and on evidence with at least two valid pieces of evidence, the judge obtains confidence that the crime actually occurred and that the defendant was guilty of committing it.

Thus it can be concluded that the function of evidence in court proceedings is as follows:

1. Strengthen the position of legal evidence;
2. Searching for and finding material truth on court cases handled;
3. After the evidence supports legal evidence, the evidence can strengthen the judge's belief in the guilt charged by the Public Prosecutor.

### **3.2. Recognition of Verbal Witnesses as Evidence for the Crime of Suspects**

According to the Big Indonesian Dictionary, verbal means people, people here are addressed to investigators who carry out verbal processes (investigations). From the perspective of criminal procedural law, a verbal witness or investigative witness is an investigator who later becomes a witness in a criminal case because the defendant stated that the BAP had been made under pressure or coercion. In other words, the defendant denied the veracity of the dossier made by the investigator concerned. So, to answer the defendant's objection, the public prosecutor can present this verbal witness.

Basically, the provisions regarding verbal witnesses have not been regulated in the Criminal Procedure Code or other laws and regulations in Indonesia. However, the use of verbal witnesses is commonly found in the practice of criminal procedural law. The appearance of this verbal witness is based on the provisions of Article 163 of the KUHAP which determines:

*"If the testimony of the witness at trial differs from the statement contained in the minutes, the head judge at trial reminds the witness about this and asks for information regarding the differences and these are recorded in the minutes of examination of the trial."*

That is why then the existence of these verbal witnesses is often encountered in trials. Because defendants often admit that they are forced to admit accusations

because they are pressured or tortured by investigators. However, every time the defendant used the pressure and torture as an excuse to withdraw the BAP, investigators generally denied it. It can be said, verbal witnesses almost never admit their actions. In principle, verbal witnesses are investigative witnesses whose function is to test the defendant's denial of the truth of the BAP. The basis for the existence of these verbal witnesses has not been regulated in existing laws and regulations, but they are often found in practice.

It has often happened in courtrooms where defendants confess that they are forced to admit accusations because they are being pressured or tortured by investigators. However, each time the defendant used the pressure and torture as an excuse to withdraw the BAP, the investigators always denied this. Indeed, never before in the history of Indonesian law has there been a verbal witness admitting to having pressured or tortured a defendant. In this trial, the assembly usually tries to confront the defendant's statement in a separate file from the files of police investigators.

In a criminal case, investigation is a series of investigative actions to seek and find an event that is suspected of being a criminal act, in order to determine whether or not an investigation can be carried out. In this case the investigator is bound by the rules, laws and regulations that apply in carrying out his duties. However, even though investigators are bound by laws and regulations, and the provisions that apply in carrying out their duties, it is possible that investigators may violate their authority. Therefore, criminalistic experts were formed who placed investigative ethics as part of the professionalism that must be possessed

According to Article 1 point 1 of the KUHAP, the definition of an investigator is an official of the Indonesian National Police or a certain civil servant official who is given special authority by law to conduct an investigation. Furthermore, what is meant by an investigator is regulated in Article 6 paragraph (1) of the KUHAP which reads "An investigator is an official of the Indonesian National Police or a certain civil servant official who is given special authority by law to conduct an investigation."

Yahya Harahap also gave an understanding of investigations and investigators, namely: "As explained in the discussion of the general provisions of Article 1 Points 1



and 2, formulates the meaning of investigation which states, investigators are Police officials or certain civil servant officials who are authorized by law.

Meanwhile, investigators are in accordance with the method stipulated in the law to seek and collect evidence, and with that evidence make or become clear that a crime has occurred and at the same time find the suspect or perpetrator of the crime. In Accordance to Law No. 26 of 2000 concerning the Court of Human Rights Article 1 number 5 investigators in this case have obligations, including:

1. authority to receive reports
2. looking for information and evidence
3. Ordering the suspect to stop and asking and checking personal identification, and taking other responsible actions according to law.

According to Law No. 26 of 2000 concerning the Human Rights Court Article 1 number 5, investigators in this case have obligations, including:

1. authority to receive reports
2. looking for information and evidence
3. Ordering the suspect to stop and asking and checking personal identification, and taking other responsible actions according to law.

Investigators can take actions such as arrest, ban, leave the place, search and confiscation if the reported person is caught in the act without having to wait for the investigator's approval. Investigators also have the authority to examine letters, confiscate documents, take fingerprints, and photograph or take pictures of people or groups caught red-handed. Another authority is that it can bring and present the person or group to the investigator.

As for Assistant Investigators according to Article 1 Point 3 of the KUHAP, assisting investigators have the meaning that officials of the Indonesian National Police who are given certain powers can carry out investigative tasks regulated in this law. The authority of the assistant investigator because of his obligations are:

- a. Receive a report or complaint from someone about a crime.

- b. Take the first action at the scene.
- c. Ordering a suspect to stop checking the identification of the suspect.
- d. Carry out arrests, detentions, searches and confiscations.
- e. Examination and confiscation of letters.
- f. Take a fingerprint and take a picture of someone.
- g. Calling people to be heard and examined as suspects or witnesses
- h. Bring in the necessary experts in connection with the examination of the case.
- i. Carrying out an investigation termination.
- j. Take other actions according to responsible law.

In the case of detention, the assistant investigator must request delegation of authority from the investigator according to Article 11 of the KUHAP. Furthermore, according to the explanation, the delegation of detaining authority to assistant investigators is only granted if an order from the investigator is not possible due to circumstances and circumstances which are urgently needed or where there are obstacles to transportation in remote areas or in places where there are no investigating officers and or in other cases that can be accepted according to fairness according to the elucidation of Article 11 of the KUHAP.

Meanwhile, with regard to Civil Servant Investigators called PNS Investigators, the existence of PNS investigators is the result that not all criminal acts of a special nature are controlled by Police investigators. Maybe at the central level, Police agencies have experts, but in the regions not all Police agencies have experts as investigators in certain crimes which are the authority of PNS investigators. Civil servant investigators have the authority in accordance with the Law which is the legal basis for each according to Article 7 paragraph 2 of the KUHAP. The authority of civil servant investigators generally refers to the Criminal Procedure Code unless otherwise specified in the law concerned.

Proof is the search for material truth in a trial regarding the right or wrong of a defendant by using valid evidence according to law. Proof is seen from the perspective of criminal procedural law, which is a provision that limits court proceedings in an effort

to seek and defend the truth by judges, public prosecutors, defendants and legal advisers. Article 184 of the KUHAP explains that in the trial examination of criminal cases several pieces of evidence are needed, namely: 1. Witness testimony; 2. Expert testimony; 3. Letter; 4. Instructions and Statement of the Defendant.

The statement submitted by the verbal witness which constitutes an acknowledgment of the occurrence of acts of violence against the suspect during the examination is conveyed at the time the trial is handling the case being carried out by the suspect, which means that the information conveyed by the verbal witness before the Panel of Judges has evidentiary value. imperfect or independent evidence. Free evidentiary value means that the judge is not bound by any piece of evidence, in this case the statement from verbal witnesses.

The judge is free to assess whether or not the evidence is correct and should be used or not (Mertokusumo, 2005). However, because in this case the verbal witness provided information in the form of an acknowledgment, the acknowledgment was already the initial evidence that a crime had been committed in the form of a crime of persecution. According to jurisprudence, persecution has a definition that is intentionally causing unpleasant feelings (suffering), pain, or injury.

In order for acts of violence or abuse that have been carried out and acknowledged by verbal witnesses to be upheld according to existing law, a report must be made. Such reporting can be carried out by the suspect who is a victim of abuse, the suspect's legal adviser, the suspect's family, even the judge, because the crime of persecution is included in an ordinary offense so that reporting can be done by anyone who saw and heard the incident himself. After reporting, an investigation can begin.

It is during this investigation process that statements from verbal witnesses can be used as evidence for the crime of abuse, because these statements are conveyed directly before investigators. Of course, verbal testimony from witnesses alone is not enough, therefore it must be supported by several other pieces of evidence such as witness testimony, expert statements, letters and instructions because to fulfill the initial evidence there must be at least two valid pieces of evidence.

Witness testimony has the meaning of the information given by the witness before the trial based on what he saw, heard or experienced himself, not based on his own opinion, conjecture or assumptions. If the witness gives information according to his own assumptions, then the statement cannot be accepted as a judge's consideration or in other words, the statement does not include evidence. Witness testimony considered as valid evidence is what the witness stated in court in accordance with what is described in Article 185 paragraph (1) of the Criminal Procedure Code.

In assessing the truth of a witness' testimony, the judge must seriously pay attention to:

- a. The agreement between the testimony of one witness and another.
- b. Correspondence between witness testimony and other evidence.
- c. Reasons that may be used by witnesses to give certain statements.
- d. The way of life and decency of witnesses as well as everything that in general can influence whether or not the testimony can be trusted.

In this case we can get witness information from the suspect who is the victim of the abuse itself. Victims of a crime have the right to submit a report to investigators. Victims can be used as witnesses who are generally referred to as victim witnesses. This victim-witness can provide information about the incident of the crime that he himself experienced. If in the middle of examining this case the victim wants to reconcile or stop the examination, the investigator cannot stop or withdraw the report on the alleged crime of persecution because the crime of persecution is an ordinary offense.

If the victim does not wish to testify or the person reporting this case is not the victim herself, we can obtain evidence for this witness' testimony from the testimony of other witnesses, namely from reporting witnesses or other witnesses who saw and heard the information themselves in the form of confessions made by the Investigating Witness (*Verbal*) before the Panel of Judges, if the victim is willing to be a witness and the report is made by the victim himself, the statement from the victim is sufficient as

long as it is accompanied by other valid evidence (Article 185 paragraph (3) of the KUHAP.

#### 4. CONCLUSIONS

Witness testimony is legal evidence as regulated in Article 184 paragraph (1) of the KUHAP. A verbal witness is an investigative witness who is presented by a judge in a trial because the defendant withdraws the Minutes of Examination (BAP). The presence of this verbal witness was to prove the testimony of the defendant who said that during the investigation the defendant was under pressure or coercion.

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#### 5. SUGGESTION

In criminal justice, there are witnesses who are requested by the defendant or legal adviser or public prosecutor during the trial or before the decision is rendered, the head judge of the trial is obliged to hear the testimony of the witness for the sake of fair criminal law enforcement.

Even though there were witnesses who were not examined at the investigative level, such as verbal witnesses who were submitted during the trial or before the verdict. For the sake of fair enforcement of criminal law, the defendant, if under pressure and coercion during an investigation, submits the revocation of the Minutes of Examination (BAP) to the Panel of Judges.

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