

Juridical Analysis of Witness Testimony De Auditum in the Case of Sexual Abuse of Minors

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Abstract : This study aims to juridically analyse the use of testimonial witness testimony de auditum in cases of sexual abuse of minors with a case study of case number 26/Pid. Sus/2024/PN Lbo. In the context of criminal law, testimonial witness testimony de auditum refers to a statement submitted by a witness regarding what he heard from another party, which cannot be used as direct valid evidence, but can provide relevant clues. This research examines the admissibility and influence of such testimony on evidence in cases of child sexual abuse, as well as its relevance in the Indonesian criminal justice system. The method used is Empirical approach by analysing legal practices, as well as related court decisions. The results showed that de auditum testimony has limitations in terms of evidentiary power, its use in cases of child sexual abuse, de auditum witness testimony should be accepted, but must be supplemented with additional evidence such as medical examinations, digital evidence, or witnesses who can confirm the event. Judges should prioritise the principles of caution, objectivity and fairness in evaluating such testimony, to ensure that the decision made is not only fair to the victim but also to the defendant.

Keywords: Juridical analysis, witness testimony, testimony de auditum, child sexual abuse, evidence.

1. INTRODUCTION

Indonesia is a state of law. Article 1 paragraph (3) of the Indonesian Constitution states that, 'The State of Indonesia is a State (a et al., 2013) of law'. This underlies that Indonesia needs laws and regulations. However, laws and regulations will always be left behind by the development of society that runs faster. Therefore, there is a term stating, *her recht hink achter de feiten aan*, meaning that the law follows the events from behind. Law enforcement is a process that arises from the occurrence of a violation of the law. One of the efforts in the law enforcement process is the formulation of a regulation that we can now call the Criminal Procedure Law. Criminal Procedure Law is a collection of provisions on how to investigate, investigate, prosecute, and try someone who is considered guilty and commits a violation of criminal law. Criminal Procedure Law has a narrower scope, which starts with finding the truth, investigation, investigation and ends in the process of implementing court decisions (execution) by the prosecutor. With the establishment of KUHAP, there is a complete codification and unification in the sense that it covers the entire criminal process from the beginning (seeking the truth) to the level of cassation in the Supreme Court, even up to the review (*herziening*). In addition, there are also things that need to be adjusted to the times, for example in terms of evidence.

In the guidelines for the implementation of KUHAP, it is explained that the purpose of criminal procedure law is to seek and obtain the truth or at least approach the material truth, namely the complete truth of a criminal case. To seek and obtain material truth, namely the complete truth of a criminal case by applying the provisions of the criminal procedure law honestly and precisely with the aim of finding perpetrators who can be charged with committing an offence, and then requesting an examination and decision from the court in order to find out whether a criminal offence has been proven and whether the person charged is to blame.(Rivai, 2018)

Evidence in criminal procedure law is a very essential part, to determine the fate of a defendant. Whether or not a defendant is guilty, as charged in the indictment, is determined by the evidentiary process. This is an effort to prove the truth of the contents of the indictment submitted by the public prosecutor. Its purpose is to obtain the real truth (material) to several questions, such as which actions are considered proven according to the trial examination, whether it is proven that the defendant is guilty, what criminal offences have been committed, and what punishment will be imposed.

The nature of evidence in criminal procedure law is very urgent, when it is explained by a proof which is a process to determine and state about someone's guilt. The conclusion of this proof is carried out through the judicial process, so that it will determine whether a person can be sentenced or can be acquitted of charges because it is not proven to have committed a criminal offence, or released from legal charges because what is charged is proven, but does not constitute a criminal offence. The most important thing in evidence is the existence of valid evidence.(Foundation, 1999) Meanwhile, one of the important things in valid evidence is witnesses.

Limitatively, the Criminal Procedure Code has regulated the criteria for witnesses as stated in Article 1 paragraph 26 which reads: 'A witness is a person who can provide information for the purpose of investigation, prosecution, and judiciary about a criminal case that he himself heard, he himself saw, and he himself experienced.' and number 27 which reads: 'witness testimony is one of the evidence in a criminal case in the form of a statement from a witness regarding a criminal event that he himself heard, saw, and experienced by himself by stating the reason for his knowledge.'

Based on this, not all witness testimony has value as evidence. Witness testimony that has value as evidence is testimony that is in accordance with what is explained in Article 1 number 27 of the Criminal Procedure Code, connected with the explanation of Article 185

paragraph (1), it can be concluded: first, any witness testimony outside of what he himself heard in the criminal event that occurred or outside of what he saw or experienced in the criminal event that occurred, information given outside of his own hearing, vision, or experience of a criminal event that occurred, 'cannot be used and valued as evidence'. Such testimony has no evidentiary value; secondly, 'testimonium de auditu' or witness testimony obtained as a result of hearing from another person 'has no value as evidence'. Witness testimony in court in the form of repeated testimony of what he heard from others cannot be considered as evidence.

The practice of using de auditu witnesses in cases of sexual abuse against minors in Amurang District Court Decision Number 96/Pid.Sus/2018/PN Amr. Where in the Amurang district court decision the judge affirmatively confirmed that the de auditu witness category could not be used as a valid witness as an instrument to strengthen suspicion.

Based on the series of background problems above, the authors are interested in taking research with the title Juridical Analysis of Testimony Witnesses De Auditu in Cases of Sexual Abuse of Minors. With the formulation of the problem How is the position of Testimony De Auditu witnesses in proving case Number 26/Pid. Sus/2024/PN Lbo and How is the judge's consideration in examining, adjudicating, and deciding case Number 26/Pid. Sus/2024/PN Lbo.

2. RESEARCH METHOD

This research uses empirical research method is legal research with primary data or data obtained directly from the source. With the research location in Gorontalo Regency, namely in the Limboto District Court. The reason is because based on the initial survey where the Limboto District Court handles many sexual harassment cases, one of which is the case of Juridical Analysis of Witness Testimony De Auditu in the Case of Sexual Harassment of Minors. The data collection technique in this study uses direct interview techniques with sources, namely the Limboto District Court judge who handles case Number 26/Pid. Sus/2024/PN Lbo, the data analysis used in this study is qualitative data analysis, namely looking for the meaning behind the subject's confession.

3. DISCUSSION

How is the position of Testimony De Auditu witnesses in proving case Number 26/Pid. Sus/2024/PN Lbo

The purpose of proof in Criminal Procedure Law is: To provide the certainty needed in assessing certain things about the facts on behalf of which the assessment must be based. The

Dutch word proof (*bewijs*) is used in two meanings, sometimes it is interpreted as an act by which a certainty is given, sometimes also as a result of the act, namely the existence of a certainty.

According to Prof.Dr.Eddy O.S Hiariej (H.S. Brahmana, SH., 2012) gives a conclusion (by quoting the opinion of Ian Denis) that: The word Evidence is closer to the notion of evidence according to Positive Law, while the word proof can be interpreted as proof that leads to a process. Evidence or proof (opinion of Max. M.Houck) as the provision of information in a legitimate investigation regarding facts that are more or less as they are. Proof is the act of proving. Proving means giving or showing evidence, doing something right, carrying out, witnessing and convincing.

The process of proof in relation to crime is a series of efforts to find the material truth where the judge is primarily obliged to explore and analyse each piece of evidence not only fixated on its nature but also *ex officio* explore the evidence in order to find a real truth. A series of trials of a crime called a criminal act where there is a connection with the enforcement of public law deliberately formed by the state (Rinaldia, 2022).

As time goes by, until now the problem and development of crime is still an important issue to discuss because the development of information technology also plays a role in the easier access to technology and the vulnerability of supervision. The peak of various types of crime today is not only conventional, but even global in nature such as cross-border crime, cyber crime to crimes that disrupt the balance of society.

In criminal cases, especially those involving minor victims in cases of sexual abuse, *testimonium de auditu* witness testimony has a significant role. In theory, testimony *de auditu* is testimony obtained from a witness who hears stories or information from other parties about events that occur, not from the witness's direct observation of the incident. Although in evidentiary theory, witnesses who provide such testimony are often considered weak evidence (because they fall into the hearsay category), in cases of sexual abuse of minors, this testimony is often evidence that cannot be ignored, especially if it is linked to the principles of protection of children and relevant evidentiary theories. In Supreme Court Decision Number 3175 K/Pid.Sus/2018, the Supreme Court also stated that witness testimony obtained from parties who heard the victim's story (for example, parents) can be accepted as part of the evidence, provided that the testimony is consistent and supported by other evidence. In this case, although the victim was unable to provide direct testimony, the testimony of the parents who heard the victim's story and was supported by medical evidence showing the existence of sexual abuse was sufficient to prove that the perpetrator did commit the act.

After conducting research at the Limboto District Court with judge Mr Randa Fabriana Nurhamidin, S.H., he said that the evidentiary procedure is based on Article 183 of the Criminal Procedure Code, which stipulates that before the court can be convinced that the defendant committed the crime charged, the guilt of the defendant must be proven by two valid and reliable pieces of evidence. This strategy seeks to present a clause that can at least guarantee the preservation of fundamental truth, legal justice. As a result, the method is considered suitable for upholding the law.

However, in the evidentiary system of Indonesian criminal procedure law rules have been based on the theory of the evidentiary system such as legislation (*negatief wettelijk*). This is as in article 183 of the Criminal Procedure Code. This article mentions how legal evidence as referred to in article 184 of the Criminal Procedure Code and the judge's error in accordance with the evidence that must be strengthened using legal force guided by the law (KUHP).

Witness testimony is a category of evidence as regulated in criminal procedure law. Law No. 8 of 1981, which is further explained in Article 184 of the Criminal Procedure Code if witness testimony has the first position in other reliable evidence. If a statement is admissible evidence, the witness must give testimony in court so that it can be assessed as evidence. This supports Article 185 of the Criminal Procedure Code paragraph (1) which states that if witness testimony refers to personal experience related to a criminal offence, it can only be used as evidence if the witness testifies in court. In cases of child sexual abuse, witnesses who provide *de auditu* testimony are often parents, carers, or parties who hear directly from the victim about the abuse. This testimony is important because child victims are often scared, confused, or unable to understand the legal process they are facing. Therefore, testimony *de auditu* from people close to the victim becomes an indispensable tool in uncovering the truth.

Testimonium de Auditu can be used as additional evidence if corroborated by other evidence or other information. This varies from case to case. *Testimonium de auditu* can be used as trial evidence if there is a strong reason that the witness is telling the truth. Consequently, for the most part, there is no *testimonium de auditu* witness testimony that can be used as guidance. In the event of *paltu* witness testimony or so-called *testimonium de auditu*, the judge will first consider whether each witness present at the trial has fulfilled the formal and substantive requirements of a witness as stipulated in the Criminal Procedure Code before making a decision if there is a discrepancy between the testimony of one witness and the testimony of another witness at trial. The panel of judges must examine it because if the witness does not meet the formal and substantive criteria for witness testimony evidence, then the

witness testimony cannot be accepted.

Based on the results of research with judges, the researcher concluded that Testimony de auditu in criminal cases, especially in cases of child sexual abuse, generally cannot be considered as the main legal and convincing evidence in court. While it may provide additional information, testimony de auditu does not meet the evidentiary standards required in the criminal law system, which prioritises direct, objective and reliable evidence. Due to these limitations, it is important for the justice system to rely more on direct evidence from the victim, such as medical, psychological and witness testimony, and pay particular attention to protecting victims from further trauma during the judicial process. Testimony de auditu should be considered as supplementary evidence and not as the primary means of proof in criminal cases.

How are the considerations of the judge in examining, trying and deciding case number 26/Pid. Sus/2024/PN Lbo. The judge's decision is closely related to how the judge expresses his opinion or consideration based on the facts and evidence in the trial as well as the judge's belief in the verdict on a case. In court decisions there must be considerations regarding aggravating and mitigating circumstances, these considerations are used as reasons by judges in making their decisions, be it in the form of sentencing decisions and so on. Considerations regarding the aggravating and mitigating circumstances of the defendant are regulated in Articles 197 letter d and 197 letter f of the Criminal Procedure Code.

Article 197 letter d reads: 'Considerations that are compiled in summary regarding the facts and circumstances along with the evidence obtained from the examination in court which is the basis for determining the guilt of the defendant'. Meanwhile, Article 197 letter f reads: 'Articles of legislation that are the basis for punishment or action and legislation that is the legal basis for the decision, accompanied by aggravating and mitigating circumstances for the defendant'. As law enforcers, judges have duties in the judicial field, namely receiving, examining, deciding and resolving every case submitted to them. The seekers of justice certainly yearn for cases submitted to the court to be decided by judges who are professional and have high moral integrity, so that they can produce decisions that are in accordance with the laws and regulations.

Witness testimonium de auditu is one of the evidences often used in sexual harassment cases, especially when the victim is a minor who finds it difficult to give direct testimony due to psychological factors or is not old enough to understand the event. From a legal perspective, I see that the admission of testimony from people who heard the victim's story is very important to avoid further exposing the victim to the trauma of having to speak directly in court. However, while this de auditu testimony is valid, judges must be very careful in assessing the credibility

and relevance of the testimony. It should not be the only evidence, but should be supported by other more objective evidence such as medical evidence or the victim's psychological report. As such, although it is circumstantial evidence, *de auditu* testimony can be part of the evidence that makes up the overall evidence in favour of the charges against the perpetrator.

The principles of justice in child sexual abuse cases should include two main points: firstly, the protection of the victim and secondly, the fair enforcement of the law against the perpetrator. In this case, distributive justice should be applied by ensuring that the victim's right to psychological protection and recovery is respected. Judges must ensure that children are not further traumatised by the judicial process itself. On the other hand, for perpetrators, commutative justice requires judges to provide punishment that is appropriate and proportional to the crime committed. This will create a deterrent effect, as well as show that the crime of sexual abuse against children is a serious offence that cannot be tolerated by the law.

The judge's considerations in a case of sexual abuse of a minor involve a thorough analysis of both legal and non-legal aspects. Legally, the judge will assess valid evidence, including witness testimonies (*testimonium de auditu*) and medical evidence, while adhering to the principles of legitimate proof. Non-legally, the judge must ensure that the child's right to be protected from further trauma is respected, using appropriate child protection mechanisms and considering the victim's psychological condition. The integration of legal considerations and the protection of children's rights is crucial in achieving balanced justice and providing recovery for the victim.

In relation to this, the judge's considerations regarding the defendant in the Limboto District Court Decision 26/Pid. Sus/2024/PN Lbo are as follows:

Considering that, based on the testimony of the victim and witnesses' testimonies (*testimonium de auditu*), the defendant did not sexually abuse the victim by kissing the victim's cheek and lips.

Considering that, in addition to the testimonies of the witnesses and the defendant's testimony, the case file includes documentary evidence in the form of a Birth Certificate Extract in the name of the victim.

Considering that, based on Article 185 paragraph (6) letters a to d of the Criminal Procedure Code (KUHP), the panel of judges has evaluated all the testimonies of the witnesses presented by the Public Prosecutor. Based on the testimonies of the witnesses and the defendant's testimony, in conjunction with the evidence in this case, it is established as a legal fact that the sexual abuse against the victim did occur.

Considering that, to determine whether a defendant is guilty of committing a criminal

offense, the elements of the crime must be proven. The panel of judges has considered each element of the charge under the sole indictment, and based on this consideration, the judge finds that the elements of the article in question are met by the defendant.

Considering that, based on the legal facts presented in court, the panel of judges is of the opinion that the elements of Article 82 paragraph (2) of Law No. 17 of 2016 concerning the Enactment of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection, as outlined in the sole indictment, have been proven. Therefore, the defendant is sentenced according to this charge.

Considering that, because the Public Prosecutor's sole indictment, which has been proven to have been committed by the defendant, threatens the defendant with imprisonment and a fine cumulatively, the defendant will be sentenced to both imprisonment and a fine, with the provision that if the fine is not paid, it will be replaced with imprisonment, as will be stated in the ruling below:

Considering that punishment is the ultimum remedium or the last resort for resolving a problem, when determining the punishment according to the *memorie van toelichting*, objective circumstances must be considered before imposing a sentence on the defendant. Therefore, it is necessary to first consider the aggravating and mitigating factors of the defendant.

- a. The aggravating circumstances for the defendant include: as the village head, the defendant failed to set a good example and role model for the community; the defendant's actions not only violated legal norms but also contradicted religious and moral norms in society; the defendant's actions destroyed the future of the victim, who is still a minor; the defendant's actions caused disgrace to the victim and the victim's family both in their immediate surroundings and in the wider community; the defendant was evasive and did not admit to his actions during the trial.
- b. The mitigating circumstance for the defendant is that he has never been previously sentenced.

Considering that, based on the aggravating and mitigating factors and everything that has been established during the trial, the sentence imposed on the defendant is as stated in the ruling below.

Considering that, the defendant's legal counsel, in their plea, requested the panel of judges to acquit the defendant. However, according to the panel of judges, in considering the elements of the Public Prosecutor's sole indictment, even though there were no witnesses who directly saw the defendant's sexual abuse of the victim due to the sensitive nature of the case, the panel of judges finds that the facts presented in court clearly reveal, based on the testimony

of the victim, the witnesses, and the defendant, all of which are interrelated and consistent, where the victim explained that the abuse occurred in the defendant's room.

Considering that, based on the explanation, the panel of judges has clearly established that the sexual abuse was committed by the defendant against the victim. Therefore, the panel of judges finds that the plea of the defendant's legal counsel must be rejected.

Considering that, the panel of judges finds no valid legal reason to release or acquit the defendant from custody, and therefore, the defendant must remain in detention.

Considering that the defendant has been found guilty and consequently sentenced, the defendant will also be required to pay court costs, the amount of which is specified in the ruling below.

Judgment

- a. Declares that the defendant has been proven legally and convincingly guilty of committing the criminal offense of "engaging in deceit, making a series of lies, or persuading a child to commit or allow acts of sexual abuse."
- b. Imposes a sentence on the defendant of 6 (six) years of imprisonment and a fine of IDR 1,000,000,000 (one billion rupiah), with the provision that if the fine is not paid, it will be replaced with 3 (three) months of imprisonment.
- c. Determines that the period of detention already served by the defendant shall be fully deducted from the sentence imposed.
- d. Orders that the defendant remain in detention.
- e. Charges the defendant to pay court fees amounting to IDR 5,000 (five thousand rupiah).

The acceptance of *testimonium de auditu* in cases of sexual abuse against minors has significant implications for the development of evidentiary law in Indonesia. On one hand, the acceptance of *de auditu* can help pave the way for the protection of child victims who may be unable to testify directly, as it provides the court with an opportunity to hear the victim's story through a trusted third party. This can speed up the process of truth-seeking and deliver justice for the victim.

However, the acceptance of *de auditu* also brings the risk of wrongful proof and misuse of information due to its indirect nature. Therefore, the court must exercise caution and consider other supporting evidence to corroborate the testimony. The evidentiary system must continue to prioritize fairness for the defendant and not rely on a single type of evidence as the basis for a verdict. Overall, the acceptance of *testimonium de auditu* shows a shift in

Indonesia's criminal justice system toward a more child-sensitive approach, while still maintaining fundamental principles of fair and legitimate evidence.

The acceptance of *testimonium de auditu* in cases of sexual abuse against minors is closely related to the issue of child protection as victims of sexual crimes. In many cases of child sexual abuse, victims often experience deep trauma, making it difficult for them to provide direct testimony about the events that occurred. Therefore, accepting *testimonium de auditu* in court can be seen as an important step in safeguarding the well-being of the victim and protecting their rights. This protects the child victim in the judicial process, avoids revictimization of the child victim of sexual crime, fulfills the principle of the "Best Interests of the Child" in the judiciary, encourages a more child-sensitive legal system, has a positive impact on combating child sexual crime, and minimizes the risks of manipulation or misuse of testimony.

Testimonium de auditu is testimony based on what a witness has heard, without the witness having directly witnessed the event. In the context of child sexual abuse cases, the acceptance of *testimonium de auditu* requires special attention, as it can affect the fundamental rights of both the victim and the defendant, as well as the fairness of the judicial process

Criticism 1: Restrictions in Criminal Procedure Law In the Indonesian legal system, *testimonium de auditu* is not typically accepted as direct evidence in many cases, as it can carry the risk of uncertainty or inaccuracy in the information presented. Usually, such testimony can only be accepted if it is accompanied by other supporting evidence or if there are no direct witnesses. Therefore, decisions relying on *testimonium de auditu* as the primary evidence should be questioned for their validity. Has the testimony been supplemented by stronger evidence, such as medical evidence, digital evidence, or other witnesses who directly observed the incident?

Criticism 2: Protection of Children as Victims *Testimonium de auditu* is often used in cases where the victim is a child or an individual who cannot provide direct testimony due to age or trauma. In this case, accepting testimony from a witness who directly hears the victim's story can be seen as part of efforts to protect the victim from further trauma. However, the acceptance of such testimony must be handled carefully to avoid misunderstanding or manipulation of the testimony.

The use of *testimonium de auditu* in child sexual abuse cases requires very careful evaluation, given the potential risks to justice and the balance of rights for both the victim and the defendant. In such cases, it is crucial to ensure that stronger supporting evidence

backs up the conclusions drawn by the judge to uphold the principles of justice, transparency, and human rights protection.

To create a more effective and child-friendly evidentiary system in cases of sexual crimes, several concrete steps are needed. The application of child protection principles, strengthening the use of medical and psychological evidence, utilizing technology in evidence gathering, and providing comprehensive psychological and legal assistance should be prioritized. Additionally, it is crucial to maintain a balance between the interests of the child victim and the principle of justice for the defendant, in a transparent manner and based on valid and objective evidence.

The acceptance of *testimonium de auditu* in cases of sexual abuse against minors has significant implications for the development of evidentiary law in Indonesia. On one hand, the acceptance of *de auditu* can help open the path for the protection of child victims who may be unable to provide direct testimony, while also giving the court space to hear the victim's story through a trusted third party. This can accelerate the process of truth-seeking and deliver justice for the victim.

However, the acceptance of *de auditu* also carries the risk of erroneous proof and misuse of information due to its indirect nature. Therefore, the court must be cautious and consider other supporting evidence to corroborate such testimony. The evidentiary system must continue to prioritize fairness for the defendant and not rely solely on one type of evidence as the basis for a decision. Overall, the acceptance of *testimonium de auditu* demonstrates a shift in Indonesia's criminal justice system towards a more child-sensitive approach, while still adhering to the fundamental principles of fair and legitimate evidence.

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Testimonium de auditu refers to testimony based on what a witness has heard, without the witness directly observing the event. In the context of child sexual abuse cases, the

acceptance of *testimonium de auditu* requires special attention, as it may touch upon the fundamental rights of both the victim and the defendant, as well as fairness in the judicial process.

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The use of *testimonium de auditu* in cases of sexual abuse against minors requires very careful evaluation, given the potential risks to justice and the balance of rights for both the victim and the defendant. In such cases, it is essential to ensure that stronger supporting evidence backs up the conclusions drawn by the judge to uphold the principles of justice, transparency, and human rights protection.

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4. CONCLUSION

- a. The position of *testimonium de auditu* witnesses in criminal cases is limited and cannot be used as primary evidence. *Testimonium de auditu* refers to testimony provided by someone based on what they have heard from others, rather than from direct experience. Therefore, the testimony of *testimonium de auditu* witnesses cannot be considered.

- b. In the judge's considerations, it is important to ensure that *testimonium de auditu* does not become the sole basis for a ruling. In the case of harassment in this study, the panel of judges used *testimonium de auditu* witnesses without support from other evidence.

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