

Immunity Rights of Experts Who Provide Statements in Trials (Study Decision No: 47/Pdt.G/LH/2018/PN Cbi)

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Abstract

This paper investigates the critical issue of immunity rights for experts who provide statements in trials, with a specific focus on the analysis of Decision No: 47/Pdt.G/LH/2018/PN Cbi. Employing a normative research approach, the study adopts a comprehensive methodology, encompassing a case and statutory perspective alongside grammatical and systematic interpretation. The pivotal finding of the research centers on the rejection of a lawsuit by the Panel of Judges, attributing it to the absence of relative competence in the presented case. Notably, the decision contains a notable directive, proposing that "*experts in the future should have the right not to be prosecuted criminally.*" This forward-looking perspective accentuates the significance of extending immunity rights to experts. The paper underscores the urgent need for recognizing and formalizing these rights within the legal framework, advocating for the incorporation of immunity provisions for experts in the Witness and Victim Protection Law. The research contributes to the broader discourse on legal reforms, highlighting the evolving landscape concerning the legal status and protection of experts involved in legal proceedings. In navigating these complex legal dynamics, this paper calls for a proactive approach from policymakers and legislators to address and safeguard the immunity rights of experts, ensuring a fair and conducive environment for their participation in legal processes.

Keywords

Expert, Immunity Rights, Information, Decision



Introduction

A legal proof constitutes a meticulous endeavor aimed at elucidating the legal standing of the involved parties. It seeks to unravel the intricacies of a case by meticulously examining and presenting the legal arguments articulated by the parties involved. Through this process, the goal is to offer a comprehensive and lucid perspective, enabling the presiding judge to formulate well-founded conclusions and decisions regarding the veracity or fallacy of the presented claims.

The essence of legal proof lies in its capacity to construct a coherent narrative that delineates the factual and legal contours of a dispute, providing the judge with a nuanced understanding of the intricacies at play. It serves as a crucial mechanism for distilling the complexities of legal disputes into a comprehensible framework, fostering a transparent and just adjudication process. In the context of a lawsuit, legal proof assumes paramount importance as it allows the parties to articulate their positions within the bounds of the law, thereby facilitating the judge's assessment of the merits and demerits of each party's contentions. It serves as the foundation upon which the judge can impartially navigate through the legal intricacies, ultimately rendering a decision that upholds the principles of justice and fairness. As such, legal proof stands as a cornerstone in the quest for a judicious resolution of disputes within the legal system.¹

Universally recognized in the criminal justice system, evidence encompasses witnesses, experts, documents, and tangible or physical elements, referred to as evidence in the context of Indonesian criminal procedural law. The process of establishing proof in criminal law extends from the initial inquiry and/or investigation stage through to the examination stage during court hearings. This implies that investigators and summoners possess the authority to seek information from witnesses or experts, commencing from the inquiry and/or investigation stage and continuing through the trial phase.² Conversely, suspects hold the right to

¹ Ali Imron and Muhammad Iqbal, *Hukum Pembuktian* (Tangerang Selatan: UNPAM Press, 2019), p. 2.

² See also Cahya Wulandari, Sonny Saptoajie Wicaksono, and Umi Faridatul Khikmah. "Paralegal Existence in Providing Access to Justice for the Poor in Central Java." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 2 (2019): 199-206; Muhammad Bagas Ragil Wicaksono, and Hakim Anis Maliki. "Role of Paralegal in Providing Access to Justice for the Poor: Comparing Indonesia and Malaysia." *The Indonesian Journal of International Clinical Legal Education* 4, no. 2 (2022): 121-142; Maulana Fahmi Idris, "Access to Justice for Disability in the Perspective of John Rawls Theory (Case of Demak Regecy Indonesia)." *Journal of Law and Legal Reform* 2, no. 3 (2021): 391-400; Setia Untung Arimuladi, "Access to Justice Based on Expert Testimony in Tax Crimes:

request information from witnesses or experts, commencing from the inquiry and/or investigation stage and extending through to the trial phase, as outlined by Eddy O.S Hiariej in Constitutional Court Decision Number 65/PUU-VII/2010. This underscores the dynamic and comprehensive nature of the evidentiary process, emphasizing its integral role in shaping legal proceedings and ensuring a thorough and equitable adjudication of criminal matters within the Indonesian legal framework.³

The objective of presenting proof is to construct a coherent narrative reflecting the reality of an event, facilitating the derivation of a truth that aligns with rational comprehension.⁴ In the context of criminal proceedings, proof is the means by which the veracity of a criminal occurrence is established, affirming the culpability of the accused and necessitating their accountability for the alleged act. Evidence, in this context, encompasses provisions outlining lawful methods to substantiate the guilt of the accused. It serves as a set of guidelines regulating the admissible evidence permitted by law, providing the judge with a framework for ascertaining the guilt of the accused. Essentially, evidence operates as a legal mechanism that not only signifies the occurrence of a criminal event but also delineates the permissible avenues through which the prosecution can establish the culpability of the defendant. In this way, evidence plays a pivotal role in ensuring a just and reasoned adjudication process within the legal system.⁵

The crux of evidence lies in the utilization of legally sanctioned means to establish the guilt or innocence of the defendant, as stipulated by Article 184 of the Criminal Procedure Code. Valid evidence, as outlined in this legal provision, comprises (1) Witness testimony, (2) Expert testimony, (3) Letters, (4) Instructions, and (5) Statements of the defendant. The deliberate sequencing of evidence in the Criminal Procedure Code, prioritizing witness and expert statements over letters, instructions, and defendant statements, underscores the hierarchical significance of certain types of evidence in criminal procedural law.

This prioritization accentuates the paramount importance accorded to witness and expert testimonies, signaling their precedence over other forms

An Integrated Criminal Justice System Perspective in Indonesia." *Pandecta Research Law Journal* 17, no. 1 (2022): 29-36.

³ Benget Hasudungan Simatupang, "Alat Bukti Keterangan Ahli Hukum Pidana Dalam Proses Pemeriksaan Perkara Pidana." *Ensiklopedia Social Review* 2, no. 3 (2020): 304-313.

⁴ Martiman Prodjohamidjojo, *Komentar Atas KUHP: Kitab Undang-Undang Hukum Acara Pidana* (Jakarta: Pradnya Paramitha, 1984), p. 11.

⁵ M Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali: Edisi Kedua* (Jakarta: Sinar Grafika, 2006), p. 273.

of evidence. Notably, in the contemporary landscape marked by technological advancements and evolving perspectives, expert witness evidence has become particularly salient in criminal procedural law courts. This highlights a nuanced intersection between legal proceedings and technological progress, with expert testimonies emerging as a potent tool in ascertaining facts and ensuring a judicious legal process. In essence, the evolving role of evidence in criminal procedural law reflects a dynamic interplay between traditional legal principles and contemporary advancements in both technology and legal thought.⁶

Furthermore, law enforcement officials, including police, prosecutors, and judges, entrusted with handling cases, are expected to possess a comprehensive understanding of legal science.⁷ However, the reliance on information from criminal experts is a common practice among them. The principle of "*ius curia novit*" in criminal science underscores the assumption that judges are inherently knowledgeable about the law, a principle articulated in various formulations within the Law on the Supreme Court and the Law on General Courts.⁸ This principle holds significant importance, even extending to crown judges who frequently demonstrate adeptness in resolving diverse issues.

Nevertheless, challenges arise in procedural practice, particularly during the court's evidentiary process, leading to debates among lawyers, public prosecutors, and judges regarding the precise role and utility of criminal experts. The dynamic nature of these debates reflects the intricacies surrounding the expert's position and usage in proving criminal cases. Despite the established legal principle, the practical application of expert insights often gives rise to discussions and clarifications within the legal community. This emphasizes the ongoing need for a nuanced and well-defined framework governing the involvement of criminal experts in the criminal justice system, ensuring a harmonious and effective collaboration among legal professionals in the pursuit of justice.⁹

⁶ Khafifah Nuzia Arini, and Herman Sujarwo. "Kedudukan Saksi Ahli dalam Persidangan Perkara Pidana." *Syariati: Jurnal Studi Al-Qur'an dan Hukum* 7, no. 2 (2021): 245-256.

⁷ Mustafa Solmaz, "Forensic psychiatric expert witnessing in criminal and civil law." *Klinik Psikofarmakoloji Bulteni* 29 (2019): 330-330.

⁸ Tony Ward, "Explaining and trusting expert evidence: What is a 'sufficiently reliable scientific basis'?" *The International Journal of Evidence & Proof* 24, no. 3 (2020): 233-254.

⁹ Aska Winarta Putra, Umi Rozah, and Bambang Dwi Baskoro. "Kajian tentang Penggunaan Keterangan Ahli Hukum Pidana dalam Praktik Pembuktian Perkara Pidana." *Diponegoro Law Journal* 6, no. 2 (2017): 1-12.

One of the pieces of evidence that is often presented is experts, both in civil cases and criminal cases¹⁰. Experts are also often called and provide testimony at trials to shed light on a case or support the arguments of certain parties. Whether someone should be an expert is still a matter of debate and does not yet have clear qualifications. However, often the experts presented at the trial come from campus academic circles and are supported by educational levels¹¹. Basis of Evidence Expert testimony. Previously, the basic selection of an expert to provide testimony at trial was quite difficult. Determining the qualifications of experts who can provide expert testimony in a trial based on their educational qualifications or experience in a particular field is quite difficult in practice¹². There is also the view that expert witnesses must have special expertise regarding the incident or case to be heard, and expert witnesses must have a special license or certificate through training¹³.

According to A. Karim Nasution, we should not think that the person who is called an expert must be someone who has received special education or someone who has a certain diploma. According to procedural law, anyone can be appointed as an expert, as long as they are deemed to have special knowledge and experience regarding a matter, or have more knowledge and experience regarding that matter.¹⁴ Nerburgh stated that this does not mean that when we need expert help we must always ask for help from scholars or scientific experts, but also from people who are experienced and less educated, but who are still very intelligent in their field. For example: carpenters, cobblers, gun makers, hunters and so on who for certain problems can provide much needed help¹⁵.

The existence of experts raises debate about what knowledge is needed in examining criminal cases (Trial Level). In general, the experts asked for information are experts from scientific and technological disciplines who

¹⁰ Ernest Rogers, and Adam W. Stern, eds. *Veterinary Forensics: Investigation, Evidence Collection, and Expert Testimony*. (Florida: CRC Press, 2017).

¹¹ Ray Bull, "The Impact of Personal Expectations and Biases in Preparing Expert Testimony." In Robert J. Sternberg and Susan T. Fiske (eds). *Ethical Challenges in the Behavioral and Brain Sciences* (New York, USA: Cambridge University Press, 2015), pp. 200-201.

¹² Rozah Putra, and Baskoro, "Kajian Tentang Penggunaan Keterangan Ahli Hukum Pidana Dalam Praktik Pembuktian Perkara Pidana."

¹³ Arini and Sujarwo, "Kedudukan Saksi Ahli Dalam Persidangan Perkara Pidana."

¹⁴ R v Mohan, "Expert Testimony," In Graham Glancy and Cherly Regehr (eds). *Canadian Landmark Cases in Forensic Mental Health*. (London: University of Toronto Press, 2020), pp. 28-51.

¹⁵ Rini Hardianti, "Kekuatan Keterangan Ahli Bahasa Isyarat Dalam Pembuktian Tindak Pidana Perkosaan Terhadap Wanita Penderita Down Syndrome (Analisis Putusan No. 17/Pid. B/2017/Pn. Snt)." *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]* 2, no. 4 (2022): 159-167.

are not controlled by the prosecutor, the defendant's legal advisor, or the judge. Such as forensic medicine experts or judicial medicine experts, information technology experts, linguists, geologists and so on¹⁶.

In reality, experts who were present to provide information at the trial turned out to be legally prosecuted or sued, as in the case experienced by Basuki Wasis, Wasis was sued by Nur Alam, the former Governor of Southeast Sulawesi who was sentenced to 15 years in prison in a corruption case. Basuki Wasis is an expert witness presented by the Corruption Eradication Commission (KPK) in the alleged corruption trial of the former Governor of Southeast Sulawesi (Sultra) Nur Alam. In investigating the case, Basuki prepared a Report on Calculating Losses Due to Land and Environmental Damage Due to Mining by PT AHB, Buton Regency, and Bombana Regency, Southeast Sulawesi Province, dated 4 October 2017. Nur Alam sued Wasis at the Cibinong District Court. The former PAN politician demanded to confiscate the collateral (Conservatoire Beslaag) of a plot of land and a house building belonging to Wasis in Padasuka Village, Ciomas District, Bogor Regency and sentenced the Defendant to pay compensation for material losses amounting to IDR 1,472,723,024 and immaterial losses amounting to IDR 3 trillion¹⁷.

The Cibinong District Court has ruled that it lacks jurisdiction to adjudicate a case falling under the absolute competence of another court. In this instance, the Plaintiff is advised to pursue an appeal in alignment with the criminal trial jurisdiction, specifically under the purview of the DKI Jakarta High Court, which handles corruption-related offenses. This judicial decision comes as positive news for Basuki Wasis, an expert implicated in the case. The author acknowledges the court's decision.

During Basuki Wasis's testimony in the Nur Alam case, he was reportedly questioned by the panel of judges about the extent of the losses resulting from the mining exploitation conducted by PT AHB. Initially, he stated the approximate amount as Rp. 3 trillion. However, subsequent to an investigation, Basuki Wasis recalculated the loss, determining it to be Rp. 2,728,745,136,000. This recalculated amount serves as the foundation for the indictment in the ongoing legal proceedings. The clarification of this discrepancy underscores the importance of precise and accurate

¹⁶ Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali*.

¹⁷ Haris Fadhil, "Lagi! Ahli IPB Digugat Rp 3 Triliun Oleh Terdakwa Korupsi Nur Alam," *Detik News*, October 2018. Retrieved from <https://news.detik.com/berita/d-4249932/lagi-ahli-ipb-digugat-rp-3-triliun-oleh-terdakwa-korupsi-nur-alam>.

information in legal proceedings, emphasizing the diligence required in establishing the factual basis for criminal charges.¹⁸

The author found previous research which stated that legal protection and protection for experts in cases of criminal acts of corruption is a mandate from Article 32 paragraph 1 of the United Nations Convention Against Corruption (UNCAC), to provide effective protection from possible retaliation or threats/intimidation against experts who provide information regarding criminal acts of corruption. If you look at the laws and regulations in Indonesia, the Criminal Procedure Code (KUHAP) does not regulate the protection of experts, which is a legal loophole for suing experts in cases of criminal acts of corruption, as well as in the laws that regulate criminal acts of corruption and even the Draft KUHAP It also does not regulate the protection of experts. Regulations regarding protection for experts that are definitively determined can be found in Article 28 paragraph (3) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, where the LPSK can provide protection for experts, after the emergence of legal demands, whether criminal or civil, against experts.¹⁹

Meanwhile, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims does not yet regulate the right to immunity for experts even though preliminary research has explained that it does not yet regulate the right to immunity.

It is interesting to examine Decision Number 47/Pdt.G/2018/PN.Cbi. regarding the judge's legal considerations in deciding the case. So what is the background of the judge's legal considerations regarding expert immunity rights? Because the Witness and Victim Protection Law does not yet regulate expert immunity rights.

Method

¹⁸ See also Wahyu Febrianto Wahyu, Sri Afriani, and Eni Jaya. "Dalil Kerusakan Lingkungan Hidup Sebagai Dasar Pemenuhan Unsur Kerugian Negara Dalam Tindak Pidana Korupsi: Berdasarkan Putusan Mahkamah Konstitusi Nomor 2633/K/Pid. Sus/2018." *Komparatif: Jurnal Perbandingan Hukum dan Pemikiran Islam* 3, no. 2 (2023): 98-112; Abdul Rahim, "Perlindungan Hukum Terhadap Ahli dalam Proses Peradilan." *The Prosecutor Law Review* 1, no. 2 (2023): 36-66; Amarini, Indriati, and Ratna Kartikawati. "Strengthening the Position of Expert Witness in Judicial Process." *Jurnal Media Hukum* 27, no. 1 (2020): 44-54.

¹⁹ FH Eddy Nugroho, "Perlindungan Hukum Terhadap Ahli dalam Perkara Tindak Pidana Korupsi." *Jurnal Paradigma Hukum Pembangunan* 7, no. 1 (2022): 43-64. See also Arman Tjoneng, Dian Narwastuty, and Keysha Azkia Salsabila. "Diskursus Limitasi Hak Imunitas Ahli dalam Konstruksi Hukum Nasional." *Dialogia Iuridica* 13, no. 2 (2022): 162-179; Wanodyo Sulistyani, "The Admissibility of Scientific Expert Evidence Under Indonesian Criminal Justice System." *Sriwijaya Law Review* 3, no. 2 (2019): 152-161.

The research methodology employed is normative legal research, centering on a statutory and case-based approach. The principal focus is on Law Number 31 of 2014, amending Law Number 13 of 2006 regarding the Protection of Witnesses and Victims, and Decision Number 47/Pdt.G/2018/PN.Cbi. Secondary legal materials, including books, legal journals, and scientific articles, both in print and electronic formats, contribute to a comprehensive exploration of the subject matter. The collection of legal materials involves a meticulous review of literature directly relevant to the research objective.

An integral aspect of this research lies in the application of systematic and grammatical interpretation techniques to analyze the legal materials. Systematic interpretation ensures a holistic understanding of legal provisions within the broader legal framework, while grammatical interpretation delves into the linguistic nuances to extract precise legal meanings. This dual-pronged approach facilitates a nuanced and comprehensive analysis of the legal landscape surrounding witness and victim protection.

As the research unfolds, the primary objective is to delve into the intricacies of witness and victim protection laws, with a specific focus on the amendments introduced by Law Number 31 of 2014. Decision Number 47/Pdt.G/2018/PN.Cbi serves as a crucial case study in this context. By juxtaposing statutory provisions and actual legal decisions, the research aims to shed light on the practical implications and effectiveness of the legal framework in safeguarding witnesses and victims within the Indonesian legal system.

Expert Testimony in Trials: Discourse of Justice and the Protection

The recognition of expert testimony as valid evidence signifies a notable stride in legal reform. This acknowledgment reflects the awareness among lawmakers that, inescapably, advancements in science and technology have influenced the landscape of criminal cases. The evolving methodologies of criminal activities are intricately linked to scientific and technological progress. Consequently, the utilization of expert testimony has become a pivotal tool in addressing these modern complexities.

In the investigative phase, the right of investigators to leverage expert information is crucial. The dynamic nature of crime methods, influenced by scientific and technological developments, necessitates the expertise of

professionals to unravel and interpret evidence effectively. Moreover, the option to request expert testimony during trial proceedings becomes imperative. This becomes particularly relevant when expert testimony was not obtained during the investigative phase or when its inclusion is deemed necessary and beneficial for a comprehensive understanding of the case. The legislative acknowledgment of expert testimony and its integration into legal procedures reflect a responsive legal system that adapts to the evolving dimensions of crime and technology, ensuring a more nuanced and effective administration of justice.²⁰

Expert information as formulated in Article 1 point 28 of the Criminal Procedure Code, namely those that are specifically needed to explain a matter or situation and fulfill the requirements (limitations) are: 1. Information given by a person; 2. Those who have special skills; 3. About something (which is necessary); 4. To shed light on certain criminal cases; and 5. For inspection purposes. The first condition is that the expert information is provided by a person and not a legal entity or foundation and so on. Another possibility is that the person could also be several people who are part of the expert team (assembly)²¹. The second condition is that the information from the person must really have special knowledge and skills, so not just by someone who has general expertise²². The third condition is that what is explained is only about things or circumstances that are necessary in a criminal case so that it does not include things or circumstances that are obvious or that the judge already knows²³. Likewise, it does not cover things that are already known to the public or circumstances that are not relevant to the proof of a criminal case being examined as fulfilling one of the elements contained therein according to the indictment. The fourth condition, which is meant, is that something or circumstances that need to be known by the judge will make the criminal case "clear". So that it will appear from something or a situation that was originally "dark" or "unclear", to "bright" or "appears clear", namely regarding the proof of something or the condition of the criminal case²⁴.

²⁰ Rozah Putra, and Baskoro, "Kajian Tentang Penggunaan Keterangan Ahli Hukum Pidana Dalam Praktik Pembuktian Perkara Pidana".

²¹ Joseph Sanders, "Science, law, and the expert witness." *Law and Contemporary Problems* 72, no. 1 (2009): 63-90.

²² Zulfuqorov Abdurahob Abdumalik Son, "Explanation and classification of traces in the theory of trasological expert." *European Science Review* 1-2 (2020): 144-147.

²³ Sid Abdellaoui, and Anta Niang. "The bias in judgement: when "naïve" knowledge challenges expert knowledge in criminal trials." *The Journal of Forensic Practice* 24, no. 2 (2022): 111-122.

²⁴ Akhmad Sultan Al-Ghajali Akbar, "Keterangan Ahli dalam Sistem Peradilan Pidana Anak." *Badamai Law Journal* 7, no. 1 (2022): 1-24.

Furthermore, is it emphasized that the apparent inconsistency in Basuki Wasis' statements during the trial, as compared to the written report and supplemented by the indictment letter, is viewed as a common occurrence. The acknowledgment is made that lapses in memory, particularly regarding substantial monetary figures, can pose challenges for experts, and such discrepancies may occur infrequently. Contrary to assertions by Nur Alam's lawyer, this disparity is not deemed a grave concern. The rationale is that neither the panel of judges, the public prosecutor, nor legal advisors can expect accurate responses to inappropriate or scientifically unverifiable questions. It is suggested that, instead of scrutinizing Basuki Wasis' potential errors, emphasis should be placed on scientifically substantiated reports. Expert testimony, it is noted, typically takes a general form, offering opinions on the subject matter of the criminal case or matters related to it. The prohibition on experts providing assessments of specific cases being tried is highlighted. Hence, questions posed to experts tend to be hypothetical or framed in a general context, steering clear of direct evaluations of guilt or innocence based on the trial's specific facts.²⁵

In the judge's deliberation, a critical statement is made asserting the imperative for the judicial panel to affirm the immunity of all expert information, spanning various disciplines such as environmental, medical, or other scientific fields, from prosecution in civil or criminal proceedings. Despite the absence of explicit legal provisions safeguarding experts from legal repercussions, the judge offers a rationale for such immunity within the context of his decision.

The authors pivot from this judicial stance to highlight the case of Basuki Wasis, an expert in environmental matters tasked with assessing the value of losses resulting from environmental damage. The authors underscore Basuki Wasis's role in advocating for the environment, an undertaking perceived as vital for the protection of rights enshrined in regulations. Specifically, reference is made to Article 66 of Law Number 32 of 2009 concerning Protection and Environmental Management, which articulates that individuals championing the right to a healthy living environment are exempt from criminal or legal prosecution. While the legislation broadly mentions "*everyone*," a closer examination reveals that the term primarily pertains to victims and reporters, and does not explicitly extend protection to experts.

²⁵ Khafifah Nuzia Arini, and Herman Sujarwo. "Kedudukan Saksi Ahli dalam Persidangan Perkara Pidana." *Syariati: Jurnal Studi Al-Qur'an dan Hukum* 7, no. 2 (2021): 245-256.

protection of legal subjects to prevent acts of retaliation from the reported party through criminal prosecution and/or civil lawsuits, if seen from the explanation of PAS Article 66 has indeed explicitly explained to whom the right to immunity is granted. However, Article 66 is the basis for the judge's thinking in determining the right to be granted immunity to experts and not only environmental experts but also medical experts and experts in other scientific fields who are presented in court.

The exploration of the meaning and purpose of expert testimony is undertaken to elucidate its role as evidence. The overarching objective is to understand the value it brings to the evidentiary process. The significance of scrutinizing expert testimony lies in its potential impact on legal proceedings. Without a clear comprehension of the meaning and purpose of expert testimony, the examination process could descend into confusion, creating potential chaos.²⁶

The essence of expert testimony often emerges when a situation necessitates a nuanced explanation that goes beyond the understanding of the judge, public prosecutor, or defendant. In such instances, someone possessing specialized expertise becomes essential to shed light on the intricacies of the matter at hand. This underscores the indispensable role of expert testimony in ensuring a comprehensive and accurate interpretation of complex situations within the legal framework. A failure to recognize and appreciate the meaning and purpose of expert testimony could compromise the integrity and efficacy of legal examinations.

Subsequently, the judge sought an explanation from an individual lacking specialized expertise in the specific issue under consideration. From a legal standpoint, information provided by someone without distinct skills is deemed invalid evidence. This is because the law requires that information be presented by individuals possessing special expertise to be considered valid. Furthermore, if the judge lacks a proper understanding of the purpose and nature of expert testimony, it may undermine the evidentiary value derived from the expert examination.

In order for expert testimony to carry evidentiary weight, it is imperative that the individual providing information is genuinely an expert with specialized knowledge relevant to the matter at hand. Additionally, the examination should adhere to the primary aim of expert testimony, which is to elucidate and clarify the nuances of the criminal case under scrutiny. If the circumstances surrounding the case are already clear and comprehensible, there may be no necessity to solicit expert testimony. The

²⁶ Elena Gianvanni, and Stefanie J. Sharman. "Legal representatives' opinions regarding psychologists engaging in expert witness services in Australian courts and tribunals." *Psychiatry, Psychology and Law* 24, no. 2 (2017): 223-232.

integrity of the legal process hinges on a judicious understanding and application of the purpose and relevance of expert testimony in achieving the objective of clarifying complex matters within criminal proceedings.²⁷

The considerations articulated by the judge represent a significant legal milestone for the future. While judicial decisions must adhere to statutory regulations, it is crucial to recognize that judges are also obligated to delve into the societal sense of justice, demonstrating the courage to navigate beyond mere legal formalities. This marks a departure from a rigidly system-oriented approach to a more problem-oriented exploration—a legal breakthrough that not only adheres to established systems but also seeks innovative solutions. In practical terms, the conventional adherence to material and formal law often leads individuals to become entangled in routine work processes. The judge's stance encourages a departure from this conventional approach, fostering a more dynamic legal perspective that considers societal values and embraces the potential for legal discovery. This approach not only aligns with statutory frameworks but also reflects an awareness of the evolving needs and challenges within society, demonstrating a commitment to justice that extends beyond rigid legal formalities.²⁸

Waty Suwarty Haryono asserts that judicial independence, while affording judges a degree of freedom, is not synonymous with boundless autonomy. Judges, in exercising their independence, must consistently adhere to applicable laws and statutory regulations. It is imperative that this freedom does not transform into an abuse of authority, compromising the legal interests of justice seekers. Furthermore, judges must possess a nuanced understanding of judicial independence to avoid overstepping limits and engaging in actions that may result in unfair behavior.²⁹

While judges enjoy a measure of freedom, they are not absolved from justifying what is incorrect or censuring what is correct. This approach underscores the importance of maintaining ethical standards and accountability within the judiciary. Failure to do so could lead to a scenario where the judiciary and judges operate outside the bounds of the law,

²⁷ Abdul Latif, "Kebebasan Hakim dan Problematikanya dalam Sistem Peradilan Indonesia." *Jurnal Hukum dan Peradilan* 2, no. 1 (2013): 1-20.

²⁸ Latif.

²⁹ Waty Suwarty Haryono, "Azas Kebebasan Hakim dalam Memutus Perkara Pidana dalam Perspektif Kepastian Hukum," *Ius Constitutum* 1, no. 1 (2017). See also Oksana V. Kaplina, Olha H. Shylo, and Ivan A. Titko. "Using the samples of human biological materials in the criminal procedure: the practice of the European Court of Human Rights." *Wiad Lek* 72, no. 8 (2019): 1576-1581. See also V. Drozd, et al. "Obtaining samples for examination in criminal proceedings: problems of normative regulation and law enforcement." *Georgian Medical News* 292-293 (2019): 129-134.

rendering their decisions subjective rather than rooted in legal principles. The legal maxim of *Res Judicata Pro Veritate Habetur*, meaning "the judge's decision must be considered correct," underscores the commitment to justice based on a belief in the Almighty God. This principle reinforces the idea that, in the process of law enforcement and decision-making, judges must prioritize fairness above all else.³⁰

Concerning evidence presented by expert witnesses in criminal cases, it is crucial to note that, in principle, expert testimony lacks binding and conclusive evidentiary value. Consequently, the evidentiary strength attributed to expert testimony is on par with that assigned to witness testimony. This implies that the evidentiary value of expert testimony carries an independent status, known as *Vrije bewijskracht*, devoid of inherent perfection or decisiveness. The ultimate determination lies within the discretion of the judge, who possesses the freedom to assess and is not obligated to adhere strictly to it. The judge retains the liberty to exercise judgment independently and is not constrained by any obligatory acceptance of the expert's information. However, within this discretionary authority for evidence evaluation, the judge bears a moral responsibility for ascertaining the genuine truth and upholding the law and legal certainty. In doing so, the judge steers clear of absolute authority, ensuring that the pursuit of justice remains paramount in the decision-making process.

Expert testimony as evidence generally does not relate to the subject matter of the criminal case being examined. Its nature is more intended to explain something or a situation. For example, whether the victim died because he was poisoned or strangled. But who the perpetrator was could not be revealed by expert testimony. So, if expert information only reveals the same situation or thing, even if it is given by several experts, but in the same field of expertise, then no matter how many expert statements there are, it is still considered to only have the value of one piece of evidence.³¹

Support from the community has rallied behind Basuki Wasis following the legal proceedings initiated against him. Notably, the Anti-Mining Mafia Coalition, a collective amalgamation of diverse groups, has emerged as a prominent advocate. This coalition, encompassing entities such as YLBHI, ICW, WALHI, FWI, ICEL, JIKALAHARI, TII, SENARAI, JATAM, has taken proactive measures, including the collection of signatures through change.org. Their petition condemns Nur Alam, the

³⁰ Haryono, "Azas Kebebasan Hakim dalam Memutus Perkara Pidana dalam Perspektif Kepastian Hukum."

³¹ Luh Putu Kristyanti, "Saksi Ahli Sebagai Alat Bukti dalam Hukum Acara Pidana Indonesia." *Kertha Semaya* 8, no. 9 (2020): 1423-1439.

former governor of Southeast Sulawesi, urging him to withdraw the lawsuit against Basuki Wasis and instead focus on ongoing legal appeal efforts.

In the event that the involved parties persist in their pursuit of legal action, the Anti-Mining Mafia Coalition has pledged unwavering support for Basuki Wasis. The coalition underscores the importance of sustaining the momentum in the fight against corruption and the preservation of environmental integrity. They advocate for specific actions, demanding that the Cibinong District Court rejects Nur Alam's lawsuit against Basuki Wasis. Additionally, they call for the active involvement of key institutions such as the Ministry of Environment and Forestry (KLHK), the Witness and Victim Protection Agency (LPSK), and the Corruption Eradication Commission (KPK) in defending and protecting AP Basuki Wasis. In a broader call to action, the coalition appeals to all anti-corruption activists and environmental advocates to unite in support and assistance for Basuki Wasis, fostering a collaborative effort against corruption and environmental degradation.³²

Basuki Wasis faced not one but two lawsuits; the latter incident transpired on November 28, 2017, involving PT Jatim Jaya Perkasa as the Plaintiff. Remarkably, the parties reached an amicable settlement, demonstrating a capacity for resolution beyond legal proceedings. The authors posit that the robust support from the coalition underscores a societal commitment to justice, especially in cases exposing criminal activities. In instances of corruption, individuals like Basuki Wasis, contributing as an expert, embody the legitimacy that judges can leverage as considerations when delivering verdicts. This support serves as a response to prevailing societal challenges, ensuring that justice prevails and issues are effectively addressed.

Following the rejection of Nur Alam's lawsuit, another legal episode unfolded as Bambang Hero Saharjo, an expert, faced litigation from PT Jatim Perkasa, citing concerns about the accreditation status of the Bogor Agricultural Institute (IPB) laboratory. The plaintiff argued that the laboratory's unaccredited status rendered the results of its report invalid as evidence, alleging an unlawful act. Ultimately, the plaintiff withdrew the lawsuit. While acknowledging the right of individuals to pursue their legal claims, the incident prompts reflection on the need for legal authorities to exercise self-criticism. Initiating legal action against an expert should be a rational and logically sound process. The acceptance of such lawsuits could

³² Tommy Apriando, "Pengadilan Cibinong Tolak Gugatan Nur Alam, Basuki Wasis Bebas", *MONGABAY*, December 13, 2008. Retrieved from <https://www.mongabay.co.id/2018/12/13/pengadilan-cibinong-tolak-gugatan-nur-alam-basuki-wasis-bebas/>

set a detrimental precedent in the realm of law enforcement, emphasizing the importance of upholding standards and preserving the integrity of legal proceedings.

While there is a noticeable absence of explicit regulations outlining the rights of experts, judges often contemplate future regulations or *ius constitutendum*. In the pursuit of legal discovery, judges are driven by the sole intention of upholding justice. However, this process demands meticulous care, as legal discovery is susceptible to misuse, often exploited to justify the interests of involved parties, potentially due to partiality.³³

In the authors' viewpoint, these considerations also involve an exploration of societal values, with experts serving as a primary source in the context of legal exploration. The author sees a potential setback in law enforcement, suggesting that such ambiguity may discourage experts from providing valuable information crucial from investigation to trial. The law, fundamentally a safeguard for human interests, requires effective implementation.³⁴ This implementation can transpire normally and peacefully, but violations of the law may also occur when certain legal subjects neglect their obligations or infringe upon the rights of others. Legal protection becomes imperative for subjects whose rights are violated.³⁵

Ultimately, the judge's perspective in administering justice should be grounded in a combination of legal certainty and justice. This dual foundation guides the judge's views on concrete legal events, ensuring a fair and just legal response in the face of violations or breaches of legal obligations.³⁶

Moreover, Sudikno Mertokusumo underscores that law, functioning as a tool, establishes boundaries for freedom within the interactions of individuals and authorities in any community. Turning to the law serves as a safeguard for public peace, preventing the emergence of chaos and arbitrary actions in society. Additionally, Mertokusumo highlights that legal protection has a dual significance. It involves shielding the law itself from misinterpretation or harm by law enforcement officials. Simultaneously, legal protection also refers to the defense provided by the law against various forms of infringement or harm.³⁷

³³ Harifin A. Tumpa, "Penerapan Konsep Rechtsvinding dan Rechtschepping oleh Hakim dalam Memutus Suatu Perkara." *Hasanuddin Law Review* 1, no. 2 (2015): 126-138.

³⁴ Atefeh Abbasi, "Proof of the Actus Reus of Crimes Based on Expert Opinion." *Judgment* 19, no. 97 (2019): 23-47.

³⁵ Mukhti Fadjar, *Tipe Negara Hukum* (Malang: Bayumedia, 2004).

³⁶ Bhakti, Teguh Satya. "Politik Hukum dalam Putusan Hakim." *Jurnal Hukum dan Peradilan* 5, no. 1 (2016): 53-72.

³⁷ Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar*. (Yogyakarta: Cahaya Atma Pustaka, 2018).

Judges inherently lack the comprehensive knowledge of a generalist, spanning diverse fields such as psychology, chemistry, medicine, engineering, bookkeeping, and agriculture. Despite this limitation, practical realities often witness judges overlooking their inherent non-specialist status and relying on their existing knowledge, even when it may be insufficient or lacking a profound understanding. This practice underscores the importance of leveraging expert information, which becomes pivotal in offering valuable insights and serving as valid evidence in legal proceedings.

To ascertain the validity of expert information as evidence, specific criteria must be met. Firstly, the information should originate from an individual possessing "*special expertise*" directly relevant to elements within the criminal case under examination.³⁸ This requirement ensures that the expert's insights are rooted in a deep understanding of the specific subject matter at hand. Conversely, information provided by an individual presenting as an expert but lacking specialized knowledge related to the specific situation in the criminal case holds no value as valid evidence within the legal framework.

This criteria-based approach aims to guide judges in prioritizing genuine expertise when considering expert information. By emphasizing the importance of securing expert insights rooted in specialized knowledge directly applicable to the nuances of the criminal case, the approach seeks to uphold the integrity of legal proceedings and ensure a fair and informed adjudication process.³⁹

Conclusion

In conclusion, experts play a significant role in legal proceedings by providing crucial information, yet they are not immune to legal challenges and threats. The case of Basuki Wasis, who faced a lawsuit for offering information in a corruption trial, exemplifies the potential legal repercussions experts may encounter. The lawsuit, initiated by Nur Alam, alleged a failure to provide information based on the expert's written

³⁸ Anna Kaldal, "Legal Expert Review of the Draft Law on Barnahus in Slovenia: Public consultation process of the draft Child protection in criminal proceedings and comprehensive treatment of children in the Children's House Act of 1 June 2020." (Council of Europe, 2020). Available online at <https://www.diva-portal.org/smash/get/diva2:1498924/FULLTEXT01.pdf>

³⁹ Sitorus, "Hakim Tidak Terikat Terhadap Keterangan Ahli." *See also and compare with* Auria Patria Dilaga, "Pengaruh Keterangan Ahli terhadap Keyakinan Hakim dalam Putusan Tindak Pidana Korupsi." *Unnes Law Journal* 2, no. 1 (2013): 1-11; Camila Amalia, et al. "The Legal Conundrums of the Metaverse." *Journal of Central Banking Law and Institutions* 1, no. 2 (2022): 323-352.

findings during the court testimony. However, the Panel of Judges, as per Decision No: 47/Pdt.G/2018/PN.Cbi, ultimately rejected the lawsuit, citing its lack of relative competence.

An intriguing aspect of the ruling was the inclusion of a statement affirming that experts should have the right not to be criminally prosecuted. This declaration underscores the significance of granting immunity to experts, acknowledging the challenges they may face in legal proceedings. It highlights the need for future governmental and legislative actions to regulate and secure the immunity rights of experts, particularly within the framework of the Witness and Victim Protection Law. By doing so, the legal system can better support and safeguard the invaluable contributions of experts, ensuring a fair and just environment for their participation in trials.

References

- Abbasi, Atefeh. "Proof of the Actus Reus of Crimes Based on Expert Opinion." *Judgment* 19, no. 97 (2019): 23-47.
- Abdellaoui, Sid, and Anta Niang. "The bias in judgement: when "naïve" knowledge challenges expert knowledge in criminal trials." *The Journal of Forensic Practice* 24, no. 2 (2022): 111-122.
- Akbar, Akhmad Sultan Al-Ghajali. "Keterangan Ahli dalam Sistem Peradilan Pidana Anak." *Badamai Law Journal* 7, no. 1 (2022): 1-24.
- Amalia, Camila, et al. "The Legal Conundrums of the Metaverse." *Journal of Central Banking Law and Institutions* 1, no. 2 (2022): 323-352.
- Amarini, Indriati, and Ratna Kartikawati. "Strengthening the Position of Expert Witness in Judicial Process." *Jurnal Media Hukum* 27, no. 1 (2020): 44-54.
- Apriando, Tommy. "Pengadilan Cibinong Tolak Gugatan Nur Alam, Basuki Wasis Bebas", *MONGABAY*, December 13, 2008. Retrieved from <https://www.mongabay.co.id/2018/12/13/pengadilan-cibinong-tolak-gugatan-nur-alam-basuki-wasis-bebas/>
- Arimuladi, Setia Untung. "Access to Justice Based on Expert Testimony in Tax Crimes: An Integrated Criminal Justice System Perspective in Indonesia." *Pandecta Research Law Journal* 17, no. 1 (2022): 29-36.
- Arini, Khafifah Nuzia, and Herman Sujarwo. "Kedudukan Saksi Ahli dalam Persidangan Perkara Pidana." *Syariati: Jurnal Studi Al-Qur'an dan Hukum* 7, no. 2 (2021): 245-256.
- Bhakti, Teguh Satya. "Politik Hukum dalam Putusan Hakim." *Jurnal Hukum dan Peradilan* 5, no. 1 (2016): 53-72.
- Bull, Ray. "The Impact of Personal Expectations and Biases in Preparing Expert Testimony." In Robert J. Sternberg and Susan T. Fiske (eds). *Ethical Challenges in the Behavioral and Brain Sciences* (New York, USA: Cambridge University Press, 2015), pp. 200-201.

- Dilaga, Auria Patria. "Pengaruh Keterangan Ahli terhadap Keyakinan Hakim dalam Putusan Tindak Pidana Korupsi." *Unnes Law Journal* 2, no. 1 (2013): 1-11.
- Drozd, V., et al. "Obtaining samples for examination in criminal proceedings: problems of normative regulation and law enforcement." *Georgian Medical News* 292-293 (2019): 129-134.
- Fadhil, Haris. "Lagi! Ahli IPB Digugat Rp 3 Triliun Oleh Terdakwa Korupsi Nur Alam," *Detik News*, October 2018. Retrieved from <https://news.detik.com/berita/d-4249932/lagi-ahli-ipb-digugat-rp-3-triliun-oleh-terdakwa-korupsi-nur-alam>.
- Fadjar, Mukhti. *Tipe Negara Hukum* (Malang: Bayumedia, 2004).
- Gianvanni, Elena, and Stefanie J. Sharman. "Legal representatives' opinions regarding psychologists engaging in expert witness services in Australian courts and tribunals." *Psychiatry, Psychology and Law* 24, no. 2 (2017): 223-232.
- Harahap, M Yahya. *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali: Edisi Kedua* (Jakarta: Sinar Grafika, 2006).
- Hardianti, Rini. "Kekuatan Keterangan Ahli Bahasa Isyarat Dalam Pembuktian Tindak Pidana Perkosaan Terhadap Wanita Penderita Down Syndrome (Analisis Putusan No. 17/Pid. B/2017/Pn. Snt)." *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]* 2, no. 4 (2022): 159-167.
- Haryono, Waty Suwarty. "Azas Kebebasan Hakim dalam Memutus Perkara Pidana dalam Perspektif Kepastian Hukum," *Ius Constitutum* 1, no. 1 (2017).
- Idris, Maulana Fahmi. "Access to Justice for Disability in the Perspective of John Rawls Theory (Case of Demak Regecy Indonesia)." *Journal of Law and Legal Reform* 2, no. 3 (2021): 391-400.
- Imron, Ali, and Muhammad Iqbal, *Hukum Pembuktian* (Tangerang Selatan: UNPAM Press, 2019).
- Kaldal, Anna. "Legal Expert Review of the Draft Law on Barnahus in Slovenia: Public consultation process of the draft Child protection in criminal proceedings and comprehensive treatment of children in the Children's House Act of 1 June 2020." (Council of Europe, 2020). Available online at <https://www.diva-portal.org/smash/get/diva2:1498924/FULLTEXT01.pdf>
- Kaplina, Oksana V., Olha H. Shylo, and Ivan A. Titko. "Using the samples of human biological materials in the criminal procedure: the practice of the European Court of Human Rights." *Wiad Lek* 72, no. 8 (2019): 1576-1581.
- Kristyanti, Luh Putu. "Saksi Ahli Sebagai Alat Bukti dalam Hukum Acara Pidana Indonesia." *Kertha Semaya* 8, no. 9 (2020): 1423-1439.
- Latif, Abdul. "Kebebasan Hakim dan Problematikanya dalam Sistem Peradilan Indonesia." *Jurnal Hukum dan Peradilan* 2, no. 1 (2013): 1-20.

- Mertokusumo, Sudikno. *Penemuan Hukum Sebuah Pengantar*. (Yogyakarta: Cahaya Atma Pustaka, 2018).
- Nugroho, FH Eddy. "Perlindungan Hukum Terhadap Ahli dalam Perkara Tindak Pidana Korupsi." *Jurnal Paradigma Hukum Pembangunan* 7, no. 1 (2022): 43-64.
- Prodjohamidjojo, Martiman. *Komentar Atas KUHP: Kitab Undang-Undang Hukum Acara Pidana* (Jakarta: Pradnya Paramitha, 1984).
- Putra, Aska Winarta, Umi Rozah, and Bambang Dwi Baskoro. "Kajian tentang Penggunaan Keterangan Ahli Hukum Pidana dalam Praktik Pembuktian Perkara Pidana." *Diponegoro Law Journal* 6, no. 2 (2017): 1-12.
- R v Mohan, "Expert Testimony," In Graham Glancy and Cherly Regehr (eds). *Canadian Landmark Cases in Forensic Mental Health*. (London: University of Toronto Press, 2020), pp. 28-51.
- Rahim, Abdul. "Perlindungan Hukum Terhadap Ahli dalam Proses Peradilan." *The Prosecutor Law Review* 1, no. 2 (2023): 36-66.
- Rogers, Ernest, and Adam W. Stern, eds. *Veterinary Forensics: Investigation, Evidence Collection, and Expert Testimony*. (Florida: CRC Press, 2017).
- Sanders, Joseph. "Science, law, and the expert witness." *Law and Contemporary Problems* 72, no. 1 (2009): 63-90.
- Simatupang, Benget Hasudungan. "Alat Bukti Keterangan Ahli Hukum Pidana Dalam Proses Pemeriksaan Perkara Pidana." *Ensiklopedia Social Review* 2, no. 3 (2020): 304-313.
- Solmaz, Mustafa. "Forensic psychiatric expert witnessing in criminal and civil law." *Klinik Psikofarmakoloji Bulteni* 29 (2019): 330-330.
- Son, Zulfuqorov Abduvahob Abdumalik. "Explanation and classification of traces in the theory of trasological expert." *European Science Review* 1-2 (2020): 144-147.
- Sulistiyani, Wanodyo. "The Admissibility of Scientific Expert Evidence Under Indonesian Criminal Justice System." *Sriwijaya Law Review* 3, no. 2 (2019): 152-161.
- Tjoneng, Arman, Dian Narwastuty, and Keysha Azkia Salsabila. "Diskursus Limitasi Hak Imunitas Ahli dalam Konstruksi Hukum Nasional." *Dialogia Iuridica* 13, no. 2 (2022): 162-179.
- Tumpa, Harifin A. "Penerapan Konsep Rechtsvinding dan Rechtsschepping oleh Hakim dalam Memutus Suatu Perkara." *Hasanuddin Law Review* 1, no. 2 (2015): 126-138.
- Wahyu, Wahyu Febrianto, Sri Afriani, and Eni Jaya. "Dalil Kerusakan Lingkungan Hidup Sebagai Dasar Pemenuhan Unsur Kerugian Negara Dalam Tindak Pidana Korupsi: Berdasarkan Putusan Mahkamah Konstitusi Nomor 2633/K/Pid. Sus/2018." *Komparatif: Jurnal Perbandingan Hukum dan Pemikiran Islam* 3, no. 2 (2023): 98-112.
- Ward, Tony. "Explaining and trusting expert evidence: What is a 'sufficiently reliable scientific basis'?" *The International Journal of Evidence & Proof* 24, no. 3 (2020): 233-254.

- Wicaksono, Muhammad Bagas Ragil, and Hakim Anis Maliki. "Role of Paralegal in Providing Access to Justice for the Poor: Comparing Indonesia and Malaysia." *The Indonesian Journal of International Clinical Legal Education* 4, no. 2 (2022): 121-142.
- Wulandari, Cahya, Sonny Saptoajie Wicaksono, and Umi Faridatul Khikmah. "Paralegal Existence in Providing Access to Justice for the Poor in Central Java." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 2 (2019): 199-206.

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