

A Juridical-Normative Study of the Position of Children as Witnesses in Proving Domestic Violence Cases

Qoidatul Maulida Ulfa¹, Arista Candra Irawati²
Universitas Ngudi Waluyo^{1,2}
Email Correspondence: maulidaqoidatul@gmail.com

Abstract

Domestic Violence (KDRT) is a complex phenomenon often occurring within the private sphere, making family members, including children, key witnesses. A child's testimony is of high urgency in uncovering the material truth, yet their standing in criminal procedural law remains debatable. This research aims to conduct a normative-juridical analysis of the legal position of children as witnesses and the evidentiary strength of their testimony in domestic violence cases. The research method employed is normative-juridical, utilizing a statute approach and a conceptual approach. Data were analyzed qualitatively by examining primary legislation such as Law No. 23 of 2004 concerning the Elimination of Domestic Violence, Law No. 35 of 2014 concerning Child Protection, and the Criminal Procedure Code (KUHAP). The findings indicate that Indonesian positive law, in principle, recognizes children as valid witnesses. However, implementation challenges exist regarding the assessment of their evidentiary strength. A child's testimony often requires special treatment, such as psychological assistance, to meet the formal and material requirements to be considered valid evidence in court. This research concludes that there is an urgent need for regulatory harmonization and technical guidelines for law enforcement officials to ensure the protection of the child's rights as a witness, while simultaneously ensuring their testimony can be effectively used to achieve justice for victims of domestic violence.

Keywords: Witness Position, Child Witness, Evidentiary Process, Domestic Violence, Child Protection

Introduction

Domestic Violence (KDRT) has been recognized as a serious violation of human rights and a crime against human dignity. (Komnas Perempuan, 2023) This phenomenon has unique characteristics because it occurs within the domestic sphere, which should be the safest place. One of the greatest difficulties in handling domestic violence cases is the evidentiary process. Its closed nature (*crimes in the private sphere*) results in a lack of witnesses from outside the family environment. Consequently, the most likely witnesses to provide testimony are those who are also inside the house, including children.

The presence of a child as an eyewitness places them in a dilemmatic position. On one hand, their testimony is crucial for uncovering the material truth and providing justice for the victim. (UNICEF, 2019) On the other hand, the Indonesian criminal procedure system, regulated in the Criminal Procedure Code (KUHAP), has historically had doubts about the validity of testimony given by children, especially those under 15 years old and not under oath. (Harahap, M.Y., 2000)

The enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) and Law No. 35 of 2014 concerning Child Protection (UU Perlindungan Anak) brought a new paradigm. These regulations are *lex specialis* that provide stronger recognition and protection for victims and witnesses in domestic violence cases. However, in law enforcement practice, juridical confusion still often occurs. Law enforcement officials (APH) are sometimes still rigid in applying the KUHAP, thus disregarding child witness testimony because it is considered not to meet formal requirements (e.g., not being sworn in).

Based on this background, this research is urgent. This study aims to analyze normatively-juridically how the legal standing of children as witnesses in domestic violence cases is truly regulated after the enactment of the UU PKDRT and the Child Protection Law, and what the evidentiary strength of their testimony is in court.

Research Method

This research is normative-juridical legal research. The nature of the research is descriptive-analytical, aiming to describe, analyze, and prescribe the legal standing of child witnesses in domestic violence cases. (Soekanto & Mamudji, 2004) The approaches used are: (1)

The *statute approach*, to examine and analyze the synchronization and conflict of norms between statutory regulations, especially the KUHAP, UU PKDRT, and the Child Protection Law. (Marzuki, 2017) (2) The *conceptual approach*, to understand the legal concepts concerning witnesses, evidence, proof, and child protection in the criminal justice system.

The sources of legal materials used include primary legal materials, namely relevant statutory regulations, and secondary legal materials consisting of books, legal journals, previous research results, and scientific articles. (Ali, 2014) All collected legal materials were analyzed qualitatively using systematic and grammatical interpretation methods to identify the legal norms governing the issue researched, and subsequently, conclusions were drawn deductively.

Result and Discussion

The Standing of Children as Witnesses: KUHAP vs. Special Laws

KUHAP and the Limitations on Child Witnesses. The KUHAP as the *lex generalis* of criminal procedural law in Indonesia, does not fundamentally prohibit children from being witnesses. Article 1 number 26 of the KUHAP defines a witness in general terms. (Republic of Indonesia, 1981) However, problems arise in Article 171 of the KUHAP. This article regulates that children under the age of 15 and who have never been married may give testimony without an oath. In the doctrine of evidentiary law, testimony given without an oath is often considered to have lower evidentiary value or only as a clue, not as full witness testimony (Hiariej, 2012). This is exacerbated by the *Unus Testis Nullus Testis* principle (one witness is no witness) in Article 185 paragraph (2) of the KUHAP.

Breakthrough by the Domestic Violence Law. Law No. 23 of 2004 serves as a significant breakthrough. There are two key articles that change the landscape of domestic violence proof:

Article 55 of the Domestic Violence Law

States that the testimony of one victim-witness alone is sufficient to prove the defendant's guilt, if accompanied by one other valid piece of evidence. This article explicitly breaks the *Unus Testis Nullus Testis* principle in the context of domestic violence.

Article 19 of the Domestic Violence Law

States that the provisions in Article 168 of the KUHAP (which prohibits blood/marital relatives from being witnesses without the defendant's consent) do not apply (Chazawi, 2013).

Although the Domestic Violence Law does not explicitly mention "child witnesses," by removing the prohibition on family witnesses, the standing of a child (as a family member) to testify becomes valid and cannot be rejected.

Strengthening by the Child Protection Law. Law No. 35 of 2014 (amending Law No. 23 of 2002) further strengthens the child's position. Article 64 letter c mandates that children who are witnesses to a crime are entitled to special protection, including assistance and humane treatment (Republic of Indonesia, 2014). This shows that the state not only recognizes the child as a legal subject who can testify but is also obliged to protect them during the process.

The Evidentiary Strength of Child Testimony

Assessing Testimony Without Oath. The main debate centers on the strength of a child's testimony given without an oath. In the *negatief wettelijk* (negative statutory) system of proof, the judge must base their decision on a minimum of two valid pieces of evidence and be supported by their conviction (Prodjohamidjojo, 2000). Witness testimony is one of the valid pieces of evidence (Article 184 KUHAP).

A child's testimony without an oath *remains* valid evidence, but its value is left entirely to the judge's conviction (*vrij bewijsoordeel*) (LBH APIK, 2018). The judge will assess the consistency, logic, and coherence of the child's testimony with other evidence, such as:

1. The victim's testimony (e.g., the mother).
2. Documentary evidence (*Visum et Repertum*).
3. Circumstantial evidence (e.g., CCTV recordings, text messages).

Analytical Case Study. In many court decisions regarding domestic violence, judges tend to accept child witness testimony as significant evidence. For example, in rulings involving physical violence, a child's consistent testimony recounting "Father hit Mother" (which they saw directly), when juxtaposed with a *visum* result showing bruises on the victim, will form an irrefutable chain of evidence. (Republic of Indonesia, 2012)

Table 1. Comparison of Child Witness Status in Various Regulations.

Aspect	KUHAP	Domestic Violence Law & Child Protection Law
Oath Status (Age <15)	Without oath (Promise)	Still without oath, but assistance is mandatory
Evidentiary Value	Often considered a clue	Regarded as Full Witness Testimony (Value determined by judge's conviction)
Family Witness	Restricted (Article 168)	Article 168 prohibition does not apply
Evidentiary Principle	<i>Unus Testis Nullus Testis</i>	Overridden (Article 55 Domestic Violence Law)

Protection of Children as Witnesses: Juridical Implications

The state's obligation is not only to use the child's testimony but also to protect them from the negative impacts of the judicial process (*secondary victimization*). The Child Protection Law and the Juvenile Criminal Justice System Law (SPPA) mandate special procedures.

Child-Friendly Examination. Ideally, the examination of a child witness should not be conducted in an intimidating open courtroom. The examination can be conducted via teleconference or in a special room with the assistance of a psychologist or social worker (Wiyono, 2016). This testimony, recorded audiovisual, can then be played in court and is valid as evidence.

Although the legal framework exists, its implementation in the field is still constrained. Limitations in facilities (special examination rooms), a lack of law enforcement officials with child sensitivity, and budgets for psychological assistance often become obstacles (Marni & Suardana, 2019). Failure to implement these procedures can result in long-term trauma for the child and may even taint the validity of the testimony obtained.

Closing

Conclusion

Normatively-juridically, the legal standing of a child as a witness in domestic violence cases is valid and fully recognized by Indonesian positive law. The existence of *lex specialis* (the Domestic Violence Law and the Child Protection Law) has set aside the rigidities of the KUHAP regarding the prohibition of family witnesses (Article 168) and the *unus testis nullus testis* principle.

The evidentiary strength of a child's testimony (including that given without an oath) has value as valid witness testimony, the strength of which is left to the judge's assessment and conviction (*vrij bewijsoordeel*), especially if supported by other valid evidence.

The biggest challenge today lies in the implementation aspect of child-friendly examination procedures. It is recommended that continuous training be provided for law enforcement officials on child psychology and procedures for examining child witnesses, as well as adequate budget allocation for support facilities, to ensure justice for domestic violence victims without sacrificing the psychological well-being of the child as a witness.

References

- Komnas Perempuan.: (2023). *Annual Report on Violence Against Women 2022*. Komnas Perempuan, Jakarta.
- UNICEF.: (2019). *Behind Closed Doors: The Impact of Domestic Violence on Children*. UNICEF Publications, New York.
- Harahap, M.Y.: (2000). *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan*. Sinar Grafika, Jakarta.
- Soekanto, S. & Mamudji, S.: (2001). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Rajawali Pers, Jakarta.
- Marzuki, P.M.: (2017). *Penelitian Hukum*. Kencana, Jakarta.
- Ali, Z.: (2014). *Metode Penelitian Hukum*. Sinar Grafika, Jakarta.
- Republic of Indonesia.: (1981). *Criminal Procedure Code*. State Gazette of the RI of 1981, No. 76.
- Hiariej, E.O.S.: (2012). *Teori dan Praktik Hukum Acara Pidana*. Erlangga, Jakarta.
- Chazawi, A.: (2013). *Hukum Pembuktian Tindak Pidana Korupsi*. Alumni, Bandung.

- Republic of Indonesia.: (2014). *Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection*. State Gazette of the RI of 2014, No. 297.
- Prodjohamidjojo, M.: (2000). *Hukum Acara Pidana Indonesia*. Ghalia Indonesia, Jakarta.
- LBH APIK.: (2018). *Panduan Penanganan Kasus KDRT: Perspektif Korban*. LBH APIK, Jakarta.
- Republic of Indonesia.: (2012). *Law No. 11 of 2012 concerning the Juvenile Criminal Justice System*. State Gazette of the RI of 2012, No. 153.
- Wiyono, R.: (2016). *Sistem Peradilan Pidana Anak di Indonesia*. Sinar Grafika, Jakarta.
- Marni, N. & Suardana, I.W.: (2019). *Problematika Pemeriksaan Saksi Anak Korban Kekerasan Seksual*. Jurnal Magister Hukum Udayana. Vol. 8, No. 2, pp. 210-221.