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Juridical Review of the Role of Expert Witnesses in Trials at the Palangka Raya District Court

Reyson Exaudi Gultom^{1*}, Thea Farina², Claudia Yuni Pramita³

¹Universitas Palangka Raya, Central Kalimantan, Indonesia, reysonexaudigultom16@gmail.com.

²Universitas Palangka Raya, Central Kalimantan, Indonesia, thea-embang@law.upr.ac.id.

³Universitas Palangka Raya, Central Kalimantan, Indonesia, claudiayuni@law.upr.ac.id.

*Corresponding Author: reysonexaudigultom16@gmail.com¹

Abstract: Expert witnesses play a crucial role in the trial process, particularly in explaining technical matters that may not be understood by judges, prosecutors, or lawyers. In the Palangka Raya District Court, the involvement of expert witnesses is frequently encountered in various types of cases. Therefore, it is important to examine the role of expert witnesses in helping judges achieve substantive justice. This study aims to analyze the role of digital forensic expert witnesses in the trial process at the Palangka Raya District Court, specifically regarding their contribution to the evidence of cases based on technical or scientific expertise to assist judges in understanding technical aspects related to cases involving information and electronic transactions that are being processed. This study uses a Normative Juridical method with a descriptive qualitative approach. The focus of the study is the analysis of the court decisions at the Palangka Raya District Court related to the role of digital forensic expert witnesses in the judicial process based on applicable laws and legal literature. Primary data was obtained from laws, court decisions, and secondary data from legal literature and expert opinions. The results of this study conclude that digital forensic expert witnesses play an important role as tools to understand the technical or scientific aspects of electronic devices, networks, and digital data analysis in the decision-making process for judges at the Palangka Raya District Court. To maintain integrity and competence, judges, prosecutors, and legal advisors are expected to be selective and objective when presenting expert witnesses, considering their competence and independence to achieve substantive justice.

Keyword: Expert Witness, Role, Criminal Justice, Normative Juridical.

INTRODUCTION

An expert witness is someone who has specialized knowledge or a profession that is necessary to explain technical aspects in a case, acquired through education or professional training and recognized through certification. In the Indonesian Criminal Procedure Code (KUHP), the role of an expert witness is not comprehensively regulated. However, according to Article 1, Number 28 of KUHP, there are two specific conditions for expert testimony:

a. The testimony must relate to matters within the expert's scope of knowledge; and

- b. The testimony must concern matters that are closely related to the criminal act being adjudicated (Umboh, 2013).

In Law No. 48 of 2009 on Judicial Power, it is explained in Article 5, Paragraph (1) that "Judges and constitutional judges must explore, follow, and understand the legal values and the sense of justice that live in society," so that judges can become part of the process of gathering legal information, especially in technical aspects such as digital forensics. Testimony from an expert can be provided during the investigation or prosecution stages. If this has not been done at those stages, the expert witness may still be asked to provide testimony during the trial, which will be recorded in the minutes after taking an oath before the panel of judges (Arini & Sujarwo, 2021).

In the criminal procedural law system, the role of expert testimony is crucial as supplementary evidence. This testimony helps explain certain aspects of a criminal act that require specialized knowledge or technical expertise that cannot be generally explained by law enforcement officers. Therefore, the presence of expert witnesses plays a role in influencing the direction of the judge's considerations in making a decision (Amin, 2020). However, expert testimony does not dominate as the primary evidence. Its main function is to complement and strengthen the proof, not to replace the testimony of fact witnesses. This is because expert testimony does not come from what the expert has seen or directly experienced in relation to the criminal act, but rather from the expert's scientific analysis of the available facts (Kawengian, 2016).

In the judicial system, expert witnesses play an important role when the case being examined involves technical or scientific aspects that are not fully understood by law enforcement officers. The testimony provided by the expert witness is based on their professional expertise and aims to assist the judge in assessing the legal facts more comprehensively.

According to Yahya Harahap, in modern judicial systems, the involvement of experts is considered helpful in achieving substantive justice (Harahap Yahya, 2017). The role of expert witnesses in the trial process is vital for explaining technical aspects that law enforcement officers do not possess expertise in. In the Indonesian Criminal Procedure Code (KUHAP), expert testimony is specifically regulated as part of the legal evidence presented in court hearings.

The Palangka Raya District Court is one of the judicial institutions that frequently utilizes expert testimony in handling certain cases. Specifically, digital forensics experts, in various cases, often contribute to helping judges understand technical matters related to the science of digital forensics in connection with cases or violations involving digital media. The types of matters typically explained by digital forensics experts include:

- a. Explaining how hacking methods, data piracy, or information theft occur;
- b. Searching for or hacking lost or deleted data or digital footprints; and
- c. Proving someone's involvement in cybercrimes such as spreading hoax content, piracy, digital pornography, defamation, and disseminating prohibited content.

This research aims to analyze the role of digital forensics expert witnesses in trial practices at the Palangka Raya District Court using a normative juridical method. The research focuses on the role of digital forensics expert witnesses in trials at the Palangka Raya District Court and examines the extent to which judges consider the opinions of digital forensics expert witnesses in making decisions, as well as the legal provisions governing expert witnesses and their practical application in relevant court rulings.

METHOD

The research method used in this academic article is a normative juridical method with a descriptive qualitative approach. The normative juridical method focuses on studying written

legal norms, specifically the laws and regulations in force, and their implementation in legal practice (Nugraha, 2024). This research aims to examine and analyze the regulations governing the role of expert witnesses in the judicial process, particularly in the context of criminal procedural law, and to assess the extent to which these regulations are applied in legal practice. The descriptive qualitative approach is employed to describe and analyze the phenomena that occur in the judicial system concerning the role of expert witnesses (Biedermann & Kotsoglou, 2018). This approach focuses on gaining a deeper understanding of the implementation of legal norms in specific cases, exploring the context and factors influencing their application in the judicial process. This research not only collects legal data in textual form but also seeks to explain the meaning, impact, and practical application of existing legal norms.

Primary data for this research is obtained from laws that regulate expert witnesses and criminal procedural law, as well as court decisions relevant to the role of expert witnesses in trials. Court decisions are selected to show how existing regulations are applied in practice and how judges consider expert witness opinions in making decisions. Secondary data is obtained from legal literature, such as books, journal articles, and other scholarly writings that discuss the role of expert witnesses in the judicial system, as well as opinions from experts relevant to this topic. This literature provides both theoretical and practical perspectives on the role of expert witnesses and how it is regulated under Indonesian law. With this approach, this research seeks to provide a clear and in-depth overview of the application of legal norms regarding expert witnesses in the judicial process, as well as identify the challenges and opportunities in legal practice concerning the role of expert witnesses.

RESULTS AND DISCUSSION

Expert Witnesses

Expert testimony is an essential form of evidence in legal proceedings, as outlined in Article 184 of Law No. 8 of 1981 concerning the Indonesian Criminal Procedure Code (KUHAP), which states that the valid forms of evidence used in court are:

- a. Testimony of witnesses;
- b. Expert testimony;
- c. Documentary evidence; and
- d. Testimony of the defendant.

Expert testimony is listed as the second form of evidence in the Criminal Procedure Code (KUHAP). According to Article 1, Number 28 of the Criminal Procedure Code, "Expert testimony is the testimony given by someone with special expertise on matters necessary to clarify a criminal case for the purposes of examination." The definition of an expert witness according to scholars is as follows:

Prof. Dr. Andi Hamzah, in his book titled *Hukum Acara Pidana* (Criminal Procedure Law), states that an expert witness is an independent form of evidence, and their presence is specifically regulated under the Criminal Procedure Code (KUHAP), particularly in Article 186, which stipulates that expert testimony must be given under oath as a form of legal responsibility for their opinion (Hamzah, 2009).

Dr. H. Oemar Seno Adji, S.H., in his book *Saksi dalam Hukum Acara Pidana* (Witnesses in Criminal Procedure Law), explains that expert witnesses differ from factual witnesses because their testimony is not based on what they have seen or directly experienced, but rather on the special expertise they possess to assist the judges in understanding technical issues (Adji, 2017).

Prof. Dr. M. Yahya Harahap, S.H., in his book *Hukum Pembuktian Dalam Perkara Pidana* (Law of Evidence in Criminal Cases), mentions that expert testimony can become strong supporting evidence when the judge requires interpretation or scientific explanation regarding a legal or technical matter that is not yet clear (Harahap Yahya, 2017).

Dr. Eddy O.S. Hiariej, in his book *Keterangan Ahli Dalam Sistem Peradilan Pidana* (Expert Testimony in the Criminal Justice System), asserts that expert testimony must be objective, scientific, and impartial, as its role is not to strengthen the accusation, but rather to assist the judge in discovering material truth (Hiariej, 2015).

Prof. Dr. Barda Nawawi Arief, in his book *Kriminologi dan Hukum Pidana* (Criminology and Criminal Law), emphasizes that in the context of combating modern crime, the involvement of expert witnesses is crucial to uncover the increasingly complex *modus operandi* of crime, particularly in technology-based crimes (Arief, 2010).

Prof. Sudikno Mertokusumo, in his book *Pengantar Ilmu Hukum* (Introduction to Legal Science), explains that the role of expertise in the legal process reflects the collaboration between legal science and other fields of knowledge to produce fair decisions based on clear facts.

In a trial, a person who can provide expert testimony is referred to as an expert witness. The conditions for someone to be called an expert are outlined in Articles 132-133 of the Criminal Procedure Code (KUHAP), which specify various types of experts such as experts in forged documents, forensic medicine, ballistics, and other areas. However, the specific requirements for becoming an expert witness are not detailed. Expert witnesses are usually called to testify through a request from the judge via the court registry to help explain matters beyond the judge's knowledge, or through the prosecutor's request by contacting the individual or institution where the expert is based to clarify technical or scientific matters related to the case being tried, or through the defense counsel's request to contact the expert to explain technical or scientific facts in defense of the defendant.

Expert testimony is a form of evidence that stands on its own, which can be used to clarify suspicions of a criminal act. Expert testimony is independent and non-binding, meaning that judges may either accept or disregard expert testimony in their decision-making. An expert does not need to have directly seen or experienced a criminal event as ordinary witnesses do. The testimony provided by an expert is based on an analysis of the existing evidence, allowing them to draw conclusions about the cause-and-effect relationships of a criminal act. Its primary purpose is to help clarify the case, making it clearer and more understandable. Expert testimony can be presented orally in court or in writing (Bakhri & Chandranegara, 2014).

The expertise of a person providing expert testimony is not solely acquired through formal education but may also be based on practical experience related to their profession or field. This aligns with the provisions in the Criminal Procedure Code (KUHAP), which do not require an expert to have a certain level of formal education as a prerequisite. It is important to note that the Criminal Procedure Code (KUHAP) differentiates between expert testimony presented directly in court and written expert testimony read in court. When an expert is present and gives testimony under oath, it is considered valid legal evidence according to criminal procedure law.

An expert witness who gives written testimony outside of court and has that testimony read aloud during the trial can have their testimony considered as documentary evidence, though it is still categorized as written expert testimony, not direct expert testimony (Bakhri & Chandranegara, 2014). In terms of evaluating expert testimony, for investigative purposes, the investigator has the right to request an expert's testimony as outlined in Article 133 of the Criminal Procedure Code (KUHAP). An expert may provide testimony or a report as requested by the investigator, which is then included in the investigator's official report as outlined in Article 186 of the Criminal Procedure Code (KUHAP). Expert testimony can be presented in court, and the procedure for delivering expert testimony as valid legal evidence begins at the investigation stage, where the investigator requests the testimony and the expert prepares a report with the legal standing of evidence according to the applicable laws.

In modern criminal procedure systems worldwide, expert testimony is recognized as a form of evidence. It can be provided during the investigation and examination phases by the investigation team or public prosecutors, and recorded in an official report, with due regard for the oath taken by the expert. Generally, expert testimony involves an expert's opinion or explanation in a specific field based on their scientific knowledge, as requested for consideration in a case. Typically, such testimony is general and pertains to the core issues of the criminal case being tried. However, experts are not allowed to provide judgments on specific facts or the concrete case being examined in court. Therefore, the questions posed to experts are typically hypothetical or general statements. Experts are not permitted to give an opinion on the guilt or innocence of the defendant based on the facts presented during the trial. From the perspective of the evidentiary system in Indonesian law, evidence can be understood as a comprehensive unit consisting of various provisions related to the proof process, which are interconnected and cannot be separated from one another.

The substance of the evidentiary system includes provisions on the types of evidence that can be used, the procedures for using that evidence, its probative value, and the standards or criteria used to draw conclusions about the object in dispute (Umboh, 2013). Based on this research, the author concludes the position of expert witnesses under the Criminal Procedure Code (KUHAP) as follows:

- a. Expert witnesses are included in the category of valid evidence under criminal procedure law;
- b. To provide testimony in court, an expert witness must have expertise relevant to the case being examined;
- c. Testimony provided by an expert witness cannot be considered valid evidence if presented outside of court; and
- d. The testimony provided by an expert witness must be based on professional competence and expertise.

As stated explicitly in Article 184 of the Criminal Procedure Code (KUHAP), expert testimony is one of the forms of evidence that judges may consider. The presence of an expert witness not only provides an explanation as a "witness" but also submits an evaluation based on their scientific knowledge to the panel of judges, ensuring that judges are not hastily making decisions. Additionally, expert witnesses must have certification or a license obtained through specialized training in a field relevant to the case. This is in accordance with the provisions of Article 189, Paragraph (2) of the Criminal Procedure Code (KUHAP), which states that testimony outside of court can only be used as supplementary evidence if supported by other valid evidence directly related to the case.

A statement can be considered as evidence if the expert has the relevant license or certification for the case at hand. The information presented must also be objective and based on scientific facts, not mere opinion or personal fabrication. Most importantly, the expert witness must have expertise directly related to the criminal act being processed in court

Role of Expert Witnesses

In various criminal cases heard in the Palangka Raya District Court, the role of expert witnesses has proven to be significant in providing scientific understanding, particularly in the field of digital forensics. Below are examples of cases heard at the Palangka Raya District Court that involved the role of a digital forensics expert witness in the trial:

a. Decision No. 324/Pid.Sus/2020/PN Plk.

The case began with a series of events experienced by witness Apt. Noraini, S.Farm, between December 2019 and February 2020, in which the defendant, David Bertram, was accused of extortion, threats, and immoral acts through electronic media towards witness Apt. Noraini, S.Farm. Between December 2019 and February 2020, the defendant repeatedly

borrowed money from witness Apt. Noraini, S.Farm, accompanied by death threats. In February 2020, the defendant also conducted a video call via WhatsApp, forcing the witness to show intimate body parts under similar threats, causing the witness to comply out of fear. This sexual video call occurred multiple times but was always under threats from the defendant, causing witness Apt. Noraini, S.Farm to comply.

In April 2020, David Bertram called the witness Apt. Noraini to come to his house on Menteng XIII Street, Menteng Village, Jekan Raya District, Palangka Raya City. Upon arrival, the defendant invited the witness to have intercourse, but the witness refused. The defendant then threatened to kill the witness, and out of fear, the witness ultimately complied with the defendant's wishes. This act of sexual intercourse frequently occurred under threats from the defendant, leaving the witness with no ability to refuse. In May 2020, when the witness informed the defendant that she was going to marry, the defendant disagreed, stating that he would ruin her degree, her education, and her life. On Saturday, June 27, 2020, the defendant spread a video of the witness, Apt. Noraini, S.Farm, to her parents, Samsuni, Nani, and Lora via WhatsApp.

In the trial at the Palangka Raya District Court, the Public Prosecutor presented a legal expert witness in the field of information and electronic transactions, Deden Imanuddin Soleh, S.H., M.H., CLA, who explained that the video recording was one form of electronic information and electronic documents that had been distributed or transmitted or accessed via the internet and/or an electronic system and could be displayed or printed or realized physically in hard copy form. Therefore, the printout of the video display could be used as electronic evidence in a Criminal Act involving Information and Electronic Transactions under Articles 5 and 6 of Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions. The video recording, which lasted 55 seconds, 52 seconds, 20 seconds, 1 minute, and 1 minute 53 seconds, contained immoral and pornographic elements because it explicitly displayed genitalia.

In this case, the expert witness clearly explained the science and expertise of digital forensics and linked it to the criminal charges the defendant faced, such as how the defendant accessed the video without the victim's knowledge, where the defendant spread the video, and through which applications or digital media the defendant distributed the video, allowing it to be accessed by others or the public through online media. In the verdict, the judge sentenced the defendant to 3 years in prison and a fine of IDR 10,000,000, considering the testimony of the witnesses and the expert witness.

b. Decision No. 338/Pid.Sus/2020/PN Plk.

On Sunday, April 5, 2020, the defendant, Ahmad Syahrani Bin Adrianus, posted a photo of witness Pina Binti Ahyan and her child using the Facebook account under the name Mariana Nina ani, accompanied by the caption: "This is the despicable homewrecker. Because of this, my husband killed me while I was pregnant, and my child died in my womb, you are so heartless." On Wednesday, May 20, 2020, the defendant posted a photo of Pina's ex-husband with the caption: "This is my ex-husband, who has no mercy." On Friday, May 22, 2020, the defendant posted an edited photo of Pina Binti Ahyan with her ex-husbands with the caption: "I'm still married to my third husband. I'm okay with being taken to a hotel by my boyfriend, who is now my husband." On Thursday, July 2, 2020, at 18:06 WIB, the defendant posted the caption: "My hobby is being with someone else's husband." On Friday, July 3, 2020, at 12:02 WIB, the defendant posted: "Rather than getting COVID, I'd rather be the one to be trapped." On July 5, 2020, at 00:36 WIB, the defendant posted: "The most satisfying, most exciting, most passionate thing is being with someone else's husband." On July 5, 2020, at 09:28 WIB, the defendant posted: "Cheating is not a trend now, but we enjoy being with someone else's husband."

The defendant's purpose in posting these captions on Facebook, using the name and photo of witness Pina Binti Ahyar, was to disgrace her.

In this case, the Public Prosecutor presented a digital forensics expert witness, Dr. Bambang Pratama, S.H., M.H., who explained that the captions and photos in the Facebook posts were a form of electronic information and electronic documents that had been distributed or transmitted or accessed through the internet and/or an electronic system, which could be displayed, printed, or realized in physical form as hard copy. Therefore, the printed photo display could be used as electronic evidence in a Criminal Act involving Information and Electronic Transactions under Articles 5 and 6 of Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 on Information and Electronic Transactions.

Based on the facts above, the elements of the criminal act under Article 51 paragraph (1) Jo. Article 35 were met because the account used the name and photo of the victim as the profile, leading others to believe that the account belonged to the victim, not the complainant. Meanwhile, Article 45 paragraph (1) Jo. Article 27 paragraph (1) was met because it distributed electronic information showing nudity, while Article 45 paragraph (4) Jo. Article 27 paragraph (4) was not met because there was no request for money or any form of economic value. However, Article 45 paragraph (3) Jo. Article 27 paragraph (3) of Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 on Information and Electronic Transactions was met because the defendant accused the complainant of being a homewrecker, thus defaming the complainant.

The expert testified that the actions of Ahmad Syahrani met the criminal elements specified under Article 51 paragraph (1) Jo. Article 35, Article 45 paragraph (1) Jo. Article 27 paragraph (1), and/or Article 45 paragraph (3) Jo. Article 27 paragraph (3) of Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 on Information and Electronic Transactions, but did not meet the elements of Article 45 paragraph (4) Jo. Article 27 paragraph (4). The punishment for the offense under Article 27 paragraph (1), as stated in Article 45 paragraph (1), is imprisonment for up to 6 years and/or a fine of IDR 1 billion, while the punishment for the offense under Article 27 paragraph (3), as stated in Article 45 paragraph (3), is imprisonment for up to 4 years and/or a fine of IDR 750 million. In the verdict, the judge sentenced the defendant to 2 years in prison and a fine of IDR 2,000,000.

From the examples above, the role of the digital forensics expert witness plays a significant part in the enforcement of technology and electronic transactions law, particularly in the Palangka Raya District Court. Through their testimony, the expert witness helps the panel of judges understand technical or scientific issues that cannot be explained by ordinary witnesses, such as in the cases above related to digital forensics or information and electronic transactions. The use of expert witnesses in the Palangka Raya District Court reflects the consistency of the judiciary in ensuring an objective, scientific, and legally compliant trial process. Therefore, the role of expert witnesses is not only a supplementary form of evidence but also a decisive factor in providing clarity on complex legal facts.

CONCLUSION

The results of this research conclude that in resolving criminal cases, particularly in the field of information and electronic transactions, the Palangka Raya District Court frequently calls upon digital forensics expert witnesses as a legitimate form of evidence according to the law in the process of proving ongoing criminal cases. The role of the digital forensics expert witness is quite significant in clarifying a case that requires expert testimony by explaining matters that are unknown to the judge regarding the technical or scientific aspects of the case being heard at the Palangka Raya District Court. The testimony of the digital forensics expert witness not only explains the technical aspects of electronic evidence but also helps the judge

understand the relationship between digital evidence and the alleged criminal act, thus serving as a consideration in the decision-making process of the criminal case.

In practice at the Palangka Raya District Court, as seen in the two analyzed court decisions, the testimony of the digital forensics expert witness has become one of the key factors in the judge's decision. This shows that the presence of expert witnesses, particularly digital forensics experts, significantly contributes to the trial process at the Palangka Raya District Court. Based on the above statements, the author also notes that the role and function of the digital forensics expert witness in the trial at the Palangka Raya District Court include several important aspects. The expert witness serves as a legitimate piece of evidence to explain the relevant scientific knowledge concerning the case at hand, provides factual testimony in court to assist the judge in understanding the case and delivering substantive justice, and offers testimony that can either strengthen or dismiss the evidence presented by the public prosecutor or defense counsel. Furthermore, the expert witness can provide testimony objectively, according to their expertise.

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