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**APPLICATION OF CHILD WITNESS TESTIMONIALS IN EVIDENCE EXAMINATIONS IN CRIMINAL CASES**

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KEYWORDS	ABSTRACT
Witness Testimony, Child Witnesses, Case Evidence	Children are a vulnerable group that requires special protection, including in the criminal law process. This study aims to analyze the enactment of child witness testimony in examining criminal case evidence. The research method used in this research is empirical juridical research. The data collection technique in this research is a literature study exploring journals, books, laws, and other relevant information. The data that has been collected is then analyzed using three stages, namely data reduction, data presentation, and conclusion drawing. The results showed that the enactment of child witness testimony in examining criminal case evidence is essential in the investigation, prosecution, and trial examination. However, Article 171 of the Criminal Procedure Code states that children who are not yet 15 years old and have never been married may be examined to provide information but may not be sworn in. The testimony of minors is considered incompletely accountable in criminal law. Therefore, they cannot be taken under oath or promise, and the testimony of child witnesses is only used as guidance. This is by the provisions of Article 185 paragraph (7) of the Criminal Procedure Code, which states that the testimony of witnesses who are not sworn in, even if it is by one another, does not constitute evidence. However, the testimony is the testimony of a sworn witness. In that case, it can be used as an addition to other legal evidence.

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**INTRODUCTION**

The existence of valid and accountable evidence is essential in criminal cases. The judicial process requires valid and convincing evidence to prove the truth of the criminal act charged. This evidence becomes the foundation for a fair and responsible decision. Presentation of valid evidence, obtained through accurate data collection processes and appropriate analysis methods, is the key to upholding justice in the judicial process (Kothari, 2023).

The court's efforts to present valid evidence include witness statements. Witness testimony in Article 1 Point 27 of the Criminal Procedure Code is a person who can provide information for investigation, prosecution, and justice regarding a criminal case that he heard, saw, and experienced personally (Asmadi, 2020). Witness testimony plays a significant role as proof of a criminal act. To determine the evidentiary value of testimony, a witness must take an oath or promise before giving testimony.

In criminal cases involving children as witnesses, the SPPA Law refers to them as child witnesses. Testimony from child witnesses is crucial during the investigation, prosecution, and trial stages. (According to Article 1 Point 29 of the Criminal Procedure Code, a child's statement is information provided by a child that is important for uncovering a criminal case by the procedures regulated in the Criminal Procedure Code (Rozi, 2018).

Children, as a vulnerable group, require special protection, especially when involved in the criminal legal process. Children can be victims or perpetrators of a criminal act (Cahyani et al., 2020). In the case of children as victims, the information given by the child has essential value as evidence in proving the occurrence of a criminal act. Protection of children in the legal realm includes their rights to physical and emotional security and sensitive and fair treatment when taking information. Information provided by children in criminal cases is essential evidence that can support justice for victims and influence the course of the legal process.

However, taking statements from child witnesses in this case requires a cautious approach. Children as witnesses may have difficulty disclosing their experiences in detail for a variety of reasons, including trauma, stress, or their inability to understand the legal process. Apart from that, the mechanism for administering the justice process can also affect children's comfort and ability to provide accurate and honest information. Concerns about re-traumatization or intimidation of children when giving testimony are also severe issues that require attention.

Previous research shows that witness testimony is one of the pieces of evidence in criminal cases in the form of testimony from a witness regarding a criminal incident that he heard and experienced by citing his reasons and knowledge (Matulisy et al., 2023). Testimonimony from other people or testimonials *de audit* in the Criminal Procedure Code states that testimony is considered valid evidence. However, based on Constitutional Court Decision Number 65/PUU-VIII. 2010 saw an expansion of the meaning of a witness regarding an event that he saw and experienced for himself. It also lies in the extent to which the relevance of the testimonial to the case being examined is connected to other valid evidence and evidence.

Other research shows that the legal strength of proof of children's testimonials without oath is not valid evidence in proving a criminal case. However, the information given can have evidentiary value, where the value of the evidence itself will give rise to the strength of the evidence, which will influence the judge's confidence in passing a decision in a criminal case (Nurtan et al., 2021). The judge uses the child's testimony consider its nature as supporting data. The judge is guided by the judge's beliefs, which arise from the instructions and cannot be separated from the applicable regulations. These regulations are regulated in the Criminal Procedure Code and other laws that specifically regulate them.

Similar research shows that the legislative approach, namely Law No. 35 of 2014 concerning Child Protection, in a criminal incident that is seen, heard, or experienced by a child, then he or she can become a witness to provide information by what was seen, heard or experienced by the child concerned in connection with the criminal incident being investigated. in front of a court hearing (Septiantika, 2021).

The novelty of this research comes from the object of the research, namely the application of child witness statements in evidentiary examinations in criminal cases. Research on the enforcement of child witness statements can be a basis for developing human rights theory, especially children's rights. The enforcement of child witness statements is a form of protection of children's rights. This research aims to analyze the application of child witness statements in evidentiary examinations in criminal cases.

## **METHOD**

The research method used in this research is empirical juridical research. The data collection technique in this research is a literature study exploring journals, books, laws, case decisions, and other relevant information. After data collection, the analysis stage begins with a three-stage approach: data reduction, data presentation, and conclusion. Data reduction requires an in-depth study

of all the information collected by filtering, selecting, and grouping relevant data and eliminating irrelevant or repetitive information. The next stage is data presentation, where the reduced data is arranged and presented in a more structured way, be it through tables, graphs, or narratives that describe the main findings of the analysis. Finally, at the conclusion-drawing stage, the information presented is interpreted comprehensively to draw conclusions or findings from the data analysis. This conclusion is then used to answer or solve previously determined research questions or analysis objectives.

## RESULTS AND DISCUSSION

Children are very vulnerable to violence committed by people around them, in public spaces, even in their own homes. Violence against children predominantly occurs in households, which can provide a sense of security, and what is very regrettable are cases of violence against children which have been considered a typical problem and are not considered criminal acts, and which often occur are acts of violence against children. Children are accompanied by criminal acts of sexual abuse against children (Akbar et al., 2023). Evidence to prove the defendant's guilt in criminal law is based on valid evidence in Article 184 of the Criminal Procedure Code, namely (Cahya, 2016) :

- a) Witness statements;
- b) Expert testimony
- c) Testimony;
- d) Instruction;
- e) Defendant's statement

Witness testimony is the foundation in proving criminal cases, as stated in its placement in Article 184 paragraph (1) of the Criminal Procedure Code, which is placed in the first position in its position as the first piece of evidence to shed light on a case being examined, which is expected to give rise to confidence in the judge, that a criminal act has occurred. The defendant is guilty of committing the criminal act (Saptosih Ismiati, 2023). Guided by Article 1 Point 26 of the Criminal Procedure Code, there is a requirement that a statement given by a witness can be assessed or categorized as valid evidence with the following conditions (Samyra, 2023) :

- a) Someone hears for themselves a criminal incident;
- b) A person sees or witnesses a criminal incident with their own eyes;
- c) Someone who experienced the incident or was a victim of the crime.

Several provisions must be fulfilled so that a witness' statement can be considered valid as evidence that has evidentiary value, including that before giving a statement, a witness must first take an oath or promise as regulated in Article 160 (3) of the Criminal Procedure Code. (Hidayati et al., 2016) . Article 171, letter a of the Criminal Procedure Code states that if a child is not married or is still a minor, he can provide information without being sworn in because the statement of a child cannot be fully accounted for in criminal procedural law. A child's statement by the Criminal Procedure Code cannot be counted as valid evidence because the only thing with the power of proof is the statement of a sworn witness. Article 171 of the Criminal Procedure Code explains that a child's statement during a trial can only be used as a guide. Article 161, paragraph (2) explains that information given by witnesses or expert testimonials not sworn in cannot be considered valid evidence and is only information capable of confirming a judge's beliefs (Wahyuni, 2023).

Applying child witness testimony in proving criminal cases is critical, especially in the investigation, prosecution, and trial process (Putri et al., 2023). Children, as witnesses, often have critical information needed to prove a crime. During the investigation stage, children's testimonies reveal clues or information that are important for investigators to uncover the incident or perpetrator

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of the crime. Furthermore, at the prosecution stage, children's testimony essential to the evidence needed in the judicial process. At trial, the child's testimonial provides essential information for the judge to make a fair and correct decision. Therefore, enforcing child witness statements is essential in ensuring justice and truth in the criminal legal process.

Article 171 of the Criminal Procedure Code states that children who have not reached the age of 15 years and have never been married can be examined to provide information regarding a particular case or incident. However, the child could not be sworn in during the examination process. This shows that although children can be questioned about a criminal case, they are not subject to an oath when giving their testimony condition reflects special protection for children as witnesses because they do not have sufficient capacity or maturity to be sworn in to testify. This article aligns with efforts to protect children as a vulnerable group in the criminal legal process.

The statements of minors are considered not fully accountable in criminal law (Nanda, 2020). Therefore, when giving testimony are not permitted to be subject to oaths or promises. According to Article 185, paragraph (7) of the Criminal Procedure Code, statements from witnesses who are not sworn in, even if they are consistent or consistent with each other, cannot be considered vital enough evidence in a legal case. However, the child's testimonial is with the testimonial sworn witness. In that case, it can be used as additional legal evidence to support the testimony approach is related to the consideration that children have limitations in understanding and providing fully accountable testimony for the child's testimony considered a guide or indication, not the primary evidence in the trial. This principle recognizes the need for extra protection for children, considering their vulnerable emotional and psychological conditions and limitations in understanding and legal responsibilities.

Children as witnesses in criminal cases have an age limit as regulated in Law no. 11 of 2012 concerning the juvenile criminal justice system in Article 1 paragraph (5) that children who are not yet 18 (eighteen) years of age can provide information for investigation, prosecution, and examination at a court hearing regarding a criminal case that is heard or seen. , and experienced it himself (Bulahari, 2022). Article 64 Paragraph (3) Letter c Law Number 35 of 2014, an amendment to Law Number 23 of 2002 concerning Child Protection, emphasizes guaranteeing the safety of children as witnesses. Law Number 13 of 2006 concerning the Protection of Victim Witnesses does not explicitly discuss victim-witnesses who are children (under 18 years). This law only ensures that there is a guarantee of dignity, safety, no discriminatory actions, and legal certainty (Article 3). Article 58 of Law Number 11 of 2012 states that children as witnesses can hear their opinions through electronic recording by community counselors in the presence of investigators, public prosecutors, and advocates. Apart from that, witness statements can be obtained through remote examination via audiovisual communication tools with the assistance of parents and community counselors (Nurtan et al., 2021). The stage of examining child victims and child witnesses is guided by article 58, paragraph (1), (2), (3), which reads:

When examining child victims and child witnesses, the judge can order the child to be taken out of the courtroom. During the examination of child victims and child witnesses, as referred to in paragraph (1), parents/guardians, advocates or other legal aid providers, and community counselors remain present. Suppose the child victim and child witness cannot appear to provide information before the court session. In that case, the judge can order the child victim and child witness to hear their statements:

- a. Outside the court session, community counselors in the local jurisdiction carried out an electronic recording. In the presence of investigators and public prosecutors adv, locate it, her legal aid providers or

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- b. Through direct remote examination using audiovisual communication tools accompanied by parents/guardians, community counselors, or other companions.

Children who act as witnesses in legal proceedings often require special protection. Their involvement in the justice process may risk their welfare and safety. This protection is essential because children can face stress, anxiety, or even threats to themselves as a result of involvement in legal cases. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that children involved in criminal acts or who appear in court are referred to as children facing legal proceedings. They must be treated empathetically, receive assistance, and be provided with appropriate facilities and infrastructure.

Sanctions given to children must be based on the child's best interests (Novita Erdianti & Al-Fatih, 2019). Additionally, their family relationships must be maintained. If children must be detained, they must be placed in special juvenile detention facilities separate from adults. The law also provides exceptional protection for children involved in legal processes as a vulnerable group. Children who become witnesses in criminal cases tend to be vulnerable to influence or threats aimed at changing their testimony, which could endanger certain parties (Morrison et al., 2020). Therefore, protection for child witnesses is critical. Article 91 in the SPPA Law confirms that child witnesses, in their capacity as witnesses, can request protection from institutions that deal with child protection or child social welfare institutions. This is intended to provide support and protection for child witnesses to feel safe and protected during the trial process (Asmadi, 2020).

The Witness and Victim Protection Agency is primarily responsible for providing complete protection to witnesses or victims and their families, starting from the moment they agree to the conditions set out in Article 30. Protection for the safety of witnesses or victims can only be stopped based on several reasons, as outlined in Article 32, viz (ValentValentina, 2017) :

1. If a witness or victim personally requests that his or her protection be stopped.
2. Upon request from an authorized official, if the witness or victim has requested protection
3. If the witness or victim violates the provisions agreed to in the agreement.
4. If the Witness and Victim Protection Agency considers that the witness or victim no longer needs protection based on convincing evidence.
5. If the witness or protected individual has died.
6. Other methods would be adequate to protect the individual concerned.
7. If a witness or protected person intentionally causes severe damage to a location that is a place of protection or to property in that place.

Protecting children who act as witnesses in the criminal legal process is closely related to the legal framework for child protection (Yanto et al., 2020). As the main rule, law is the basis for people's behavior in social interaction and a guide for the government in managing state and social life. In the context of this protection, there are essential aspects that must be emphasized, namely, ensuring that children's rights are maintained and fulfilled, respecting the human dignity of children, protecting children from all forms of violence and discrimination, and creating an environment that encourages children to become quality individuals, have noble character and live prosperously. Besides the general protection efforts mentioned previously, Law Number 35 of 2014, concerning Amendments to Law Number 23 of 2002 concerning Child Protection, regulates special protection. Special protection refers to a form of protection given to children in certain situations or conditions that threaten their security and growth, both physically and mentally. Here, the government, regional governments, and other state institutions are responsible for providing and guaranteeing special protection for children (Fitriani, 2019).

## CONCLUSION

Child witness testimony in testing evidence in criminal cases has become an integral part of the investigation, prosecution, and examination process at trial. However, there are exceptions to the rules governing the presence of child witnesses in the legal system, such as Article 171 of the Criminal Procedure Code, which allows the examination of children who have not reached the age of 15 and are unmarried to give statements without the oath. However, the information minors give is considered less than fully accountable in criminal law, so they are not given an oath or promise. Therefore, testimonial witnesses are used as a guide in decision-making. This interpretation is by Article 185, paragraph (7) of the Criminal Procedure Code, which states that statements from witnesses who have not been sworn in, even if they agree with each other, have no power as evidence. However, the child's statement aligns with the testimonial witness sworn in. In that case, this can be used as additional valid evidence in decision-making.

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