



## The Admissibility of *Testimonium De Auditu* in Criminal Evidence: An Analysis of Decision Number 1361/Pid.B/2022/PN.Sby

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**Abstract:** This study examines the juridical acceptance of *testimonium de auditu* testimony in criminal proceedings, as reflected in Decision Number 1361/Pid.B/2022/PN.Sby. The research concludes that the flexibility of judges in interpreting legal norms in evidence-gathering serves to achieve substantive justice. While Article 185 paragraph (1) of the Indonesian Criminal Procedure Code (KUHP) requires direct firsthand experience for witnesses, the reality is that judges may still accept *testimonium de auditu* when supported by other relevant evidence that complements and strengthens the case's narrative. This form of testimony has constitutional legitimacy as affirmed in Constitutional Court Decision Number 65/PUU-VIII/2010, which clarifies that indirect testimony is not automatically excluded, provided it is not the sole basis for a verdict and is corroborated by other evidence. This research supports the hypothesis that *testimonium de auditu* can be used as valid complementary evidence in certain cases, as long as it is within the boundaries of the legal system's integrity and does not undermine the principles of fair trial and defendant rights. Furthermore, the study emphasizes the need for clearer guidelines in interpreting the admissibility of indirect testimony in Indonesian criminal procedure law.

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## Introduction

In the Indonesian criminal procedural law system, witness testimony is considered one of the main forms of evidence that is recognized and used in criminal proceedings. This is explicitly regulated in Article 184, paragraph (1) of the Indonesian Criminal Procedure Code (KUHP), which states that legitimate forms of evidence consist of witness testimony, expert testimony, documents, clues, and the defendant's statement. However, despite this provision providing clarity regarding the types of evidence that can be used, further regulation regarding who

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can be considered a witness remains a subject of debate. This is particularly evident in practice when a witness provides testimony that is not based on their own experience but rather on stories or information from others. Such testimony is known in legal terms as *testimonium de auditu* (Ajie, 2023). The issue of the validity of *testimonium de auditu* has been widely discussed by both academics and legal practitioners, as it touches on the principles of due process of law and the protection of the defendant's rights within the criminal justice system (Tarigan & Rustamaji, 2023). In fact, in judicial practice, the Constitutional Court has emphasized that witness testimony must be based on first-hand knowledge, which is a fundamental requirement for it to be considered legitimate evidence.

In the context of the Indonesian Criminal Procedure Code, Article 1, number 27 defines a witness as a person who can provide testimony for the purposes of investigation, prosecution, and adjudication regarding a criminal case that they have heard, seen, or personally experienced. Normatively, this definition implies that only individuals who have directly encountered a criminal event can be classified as witnesses. Therefore, testimony obtained indirectly, based solely on statements or information from others, does not carry the evidentiary weight required by law. This creates a serious legal issue when, during a trial, a witness provides indirect testimony, yet the judge still considers such testimony (Idzhar & Sabnah, 2024).

In criminal justice practice, an interesting phenomenon arises when *testimonium de auditu* is still used by judges to strengthen their conviction in delivering a verdict. Although formally such testimony does not meet the criteria of a valid piece of evidence, in reality, many judges continue to consider such statements as supportive in the process of proving, especially when there is consistency with other pieces of evidence. This reflects the tension between *das sollen*, which refers to the ideal norms or rules in law, and *das sein*, the empirical reality in judicial practice, which often requires flexibility in proof to achieve substantive justice (Hapsari et al., 2015).

The interpretation of the definition of who can be considered a witness has been expanded following the Constitutional Court Decision No. 65/PUU-VIII/2010. In this decision, the Court stated that the definition of a witness is not limited to individuals who directly see, hear, or experience a criminal event, but also includes those who possess relevant information necessary for the judicial process. Therefore, *testimonium de auditu* is not automatically excluded, but can still be taken into account as long as the testimony is relevant, logically sound, and not the sole basis for deciding the case. This demonstrates that the court does not only employ a normative formalistic approach but also considers the values of justice and substantive truth.

As emphasized by Yahya Harahap, the system of proof in the Indonesian Criminal Procedure Code is not entirely bound by the formal system of proof but

adopts a system of negative proof according to the law (*negatief wettelijk bewijsstelsel*). This system is a combination of legally valid evidence and the judge's conviction (Syauket & Eleanora, 2023; Hawasara et al., 2022). Therefore, judges are provided with the freedom to carefully apply their judgment in linking the various pieces of evidence presented during the trial, including in evaluating the testimony of witnesses derived from *de auditu*.

A concrete example of the application of this principle can be seen in the Surabaya District Court Decision Number 1361/Pid.B/2022/PN.Sby. In this case, the panel of judges accepted and considered the testimony of four witnesses who provided evidence based on *testimonium de auditu*. Although these witnesses did not directly witness the act of assault that resulted in death, their testimonies were interconnected and supported by other pieces of evidence, such as the *visum et repertum* and the defendant's statement. The panel of judges did not treat these testimonies as the sole evidence, but rather as supplementary in evaluating the series of events and building confidence in delivering a judgment. This approach demonstrates that in judicial practice, judges do not merely adhere to formal legalism, but also consider the relevance and logical connections between the available evidence.

The interpretation of the applicability of *testimonium de auditu* in the process of proving criminal cases continues to generate significant discourse within legal literature. According to M. Yahya Harahap, in the Indonesian criminal procedure system, legally valid testimony must come from the direct experience of the witness who saw, heard, and personally experienced the criminal event under investigation, as outlined in Article 1, Paragraph 27 of the Indonesian Criminal Procedure Code. Testimonies that do not meet these requirements, such as *testimonium de auditu*, are considered to fail to meet the formal criteria for being legally accountable evidence (Damanik et al., 2021).

This study aims to analyze the regulation of *testimonium de auditu* in the Indonesian criminal procedural law system, as well as to explore the juridical considerations used by judges in accepting and evaluating testimonies from witnesses who did not directly experience the criminal event, as reflected in Decision Number 1361/Pid.B/2022/PN.Sby. By understanding this, it is expected to contribute to the development of criminal procedural law, particularly in the aspects of proof and the protection of substantive justice principles.

## Methods

This research employs a normative juridical method, which is a legal research approach focusing on the analysis of positive legal norms, including regulations, legal doctrines, and court decisions. The aim of this research is to understand how criminal procedural law regulates *testimonium de auditu* and how it is applied in

criminal court practice, specifically in the Surabaya District Court Decision Number 1361/Pid.B/2022/PN.Sby. The approach used includes: a statutory approach to analyze provisions in the Indonesian Criminal Procedure Code (KUHAP) and Constitutional Court decisions, a case approach to examine the legal considerations of judges in the ruling, and a conceptual approach to explore theoretical views and doctrines regarding testimonial evidence in criminal cases (Fuady, 2020).

The data sources used in this study consist of primary legal materials, such as legislation and court rulings, secondary legal materials in the form of academic literature, and tertiary legal materials that support the understanding of concepts. Data collection was carried out through library research, involving the examination of relevant legal documents and scholarly works. This study does not include field observations or interviews, as it is entirely based on the analysis of legal documents.

Data analysis was conducted qualitatively and juridically, by interpreting legal norms and correlating them with judicial practices to assess the alignment between *das sollen* (legal provisions) and *das sein* (facts in the judgment). The analysis technique employed was descriptive-analytical, which involves systematically outlining the legal norms and case facts, and then drawing normative conclusions based on legal reasoning and relevant theories. By using this method, the research is expected to contribute to the understanding of criminal procedural law, particularly regarding the validity of *testimonium de auditu* in proving criminal cases.

## **Results and Discussion**

### **Normative Regulation of *Testimonium De Auditu* in the Criminal Evidence System**

In the Indonesian criminal procedural system, testimony plays a crucial role as one of the primary pieces of evidence, as outlined in Article 184, paragraph (1) of the Indonesian Criminal Procedure Code. This article states that the valid types of evidence in criminal proceedings consist of: witness testimony, expert testimony, documents, indications, and the defendant's statements. Witness testimony is not merely supplementary in the evidentiary structure; rather, it serves as a key instrument in illustrating the sequence of criminal events, especially in cases where physical or forensic evidence is limited.

However, Article 1, number 27 of the Criminal Procedure Code (KUHAP) provides a normative definition of who can be classified as a witness, namely, an individual who can provide testimony based on what they have personally heard, seen, or experienced regarding a criminal event. In other words, firsthand experience is an essential prerequisite for someone to give legally valid testimony. This provision also excludes the possibility of accepting indirect testimony or

information obtained solely from others' accounts, which is recognized in law as *testimonium de auditu*. Such testimony, explicitly, does not meet the criteria for valid evidence within the criminal procedural legal system, which relies on the principles of authenticity and the veracity of the information source.

Nevertheless, the practice of jurisprudence and the development of legal thought demonstrate a dynamic interpretation of the concept of "witness." A significant milestone in expanding the normative definition of who may be considered a witness is the Constitutional Court Decision Number 65/PUU-VIII/2010. In this decision, the Court emphasized that the definition of a witness need not be limited to those who see, hear, or directly experience a criminal event. Furthermore, an individual who possesses relevant and significant information regarding the case being examined by the court may also be considered a witness, provided that their testimony helps reveal the material truth of the criminal event under investigation.

This broadening of the understanding indirectly reflects a legal response to the demand for substantive justice in society. Criminal procedural law is no longer solely based on a legalistic-formal approach but also accommodates sociological and teleological approaches. These approaches align the law with social realities and the primary goals of law itself, which are to uphold truth and justice. In this context, Indonesia's criminal procedural law demonstrates its dynamic and adaptive nature, not rigidly confined to the wording of articles but also allowing for progressive interpretations that align with societal changes and constitutional values.

The authors argue that the quality of a witness cannot only be assessed from formal aspects, such as legal status or the method of acquiring information, but also from substantive dimensions such as personal integrity, consistency in providing testimony, and the relevance of the testimony to the case being examined. Therefore, judges bear a significant responsibility to critically and thoroughly examine the background and context of the testimony given, including how the information was obtained and to what extent it contributes to shaping the judge's belief in the material truth.

In this context, the difference between the definitions in the Criminal Procedure Code and the interpretation by the Constitutional Court should not be positioned as a clash of norms but rather as a form of legal development that is evolutionary and responsive. Progressive legal interpretation does not imply deviation from the norms; rather, it reflects the spirit of legal renewal aimed at addressing the complexities of legal issues that cannot always be resolved through a purely textual approach. Therefore, the recognition of *de auditu* testimony, within certain conditions and boundaries, serves as a concrete manifestation of the application of the principles of fair and impartial justice. This approach not only upholds legality but also guarantees the protection of human rights and ensures substantive justice.

## Legal Analysis of Decision Number 1361/Pid.B/2022/PN.Sby

In the Surabaya District Court Decision Number 1361/Pid.B/2022/PN.Sby, the defendant was tried for allegedly committing sexual assault against a minor. Although the Public Prosecutor presented the charges alternatively, the Panel of Judges, based on the legal facts presented during the trial, chose to directly adopt the second alternative charge, as regulated under Article 289 of the Criminal Code in conjunction with Article 65 paragraph (1) of the Criminal Code. This article governs acts of sexual assault involving violence or threats of violence against another person and when committed multiple times.

This criminal offense falls under the category of crimes against decency, with serious consequences, particularly because it was committed against victims who have not yet reached the physical and psychological maturity required to protect themselves from deviant sexual behavior. In its ruling, the Court Panel stated that the defendant was legally and convincingly proven guilty of committing the crime of molestation, and therefore sentenced to seven years in prison.

In the process of proof, the Public Prosecutor presents several witnesses whose testimonies are not derived from firsthand experience of witnessing the criminal act but rather based on the statements of the victim or other parties. This type of testimony falls under the category of *testimonium de auditu*, which refers to information based on what others have said. Normatively, the Indonesian Criminal Procedure Code through Article 1, paragraph 27 defines a witness as someone who has seen, heard, or personally experienced the criminal event. Therefore, *testimonium de auditu* does not formally meet the definition of a witness according to KUHP. However, judicial practice in this case reflects a more substantive approach, where the validity of testimony is assessed not only based on formal criteria but also on its logical weight and substantive relevance to the proof of the case.

The Court, in its legal consideration, stated that the testimonies of the witnesses are logically correlated with one another, despite not being based on direct experience. These testimonies form a consistent narrative that mutually supports and strengthens other legal facts revealed during the trial, such as the result of the *visum et repertum*, which indicated signs of sexual violence on the victim's body, as well as the confession from some of the defendants acknowledging inappropriate physical contact. All these pieces of evidence form the basis for the judge to establish a comprehensive conviction, in accordance with the principle of *negatief wettelijk* proof adopted in the criminal procedural law of Indonesia.

In its consideration, the Panel of Judges stated:

*“The Panel of Judges assessed that the testimonies of the witnesses, based on testimonium de auditu, presented by the Public Prosecutor, despite being given*

*separately and not derived from direct experience, are closely interconnected with one another and form a sequence of facts that mutually reinforce each other.”*

This statement indicates that hearsay testimony (*de auditu*) is not automatically disregarded, but rather considered as valid supporting evidence if it is strongly linked to other evidence. It also suggests that the court allows for the evaluation of witness testimony based on its essence and probative value, rather than solely on its form.

In line with this, the Court also explicitly refers to the Constitutional Court Decision Number 65/PUU-VIII/2010, which expands the definition of a witness in criminal procedural law. This ruling states that a witness is not limited to an individual who directly experiences an event, but also includes those who possess relevant and significant information pertaining to the case being examined. Based on this, the Court concludes that testimony *de auditu* in this case remains valid according to Article 184, paragraph (1) of the Criminal Procedure Code, provided that the testimony is not the sole basis for conviction and is supported by other evidence.

This decision reflects an evolution in the approach to criminal procedural law in Indonesia, which increasingly prioritizes substantive justice, particularly in cases of sexual offenses. In this context, flexibility in evaluating *de auditu* testimonies is part of the judicial effort to ensure that the voices of victims are not disregarded, even when conveyed through an intermediary. This approach also demonstrates that the criminal justice system not only serves to enforce the law textually but also plays a role as a guardian of justice values and protection for vulnerable groups within society.

### **Caution in the Evaluation of *De Auditu* Testimony**

The author emphasizes that while the legal system allows for the acceptance of *de auditu* testimony, judges must exercise extreme caution when assessing it. This is due to the high potential for indirect testimony to be fabricated or manipulated, especially in cases involving the reputation and future of the defendant or the victim.

Therefore, although hearsay evidence may be considered, it should not stand alone as the basis for forming a belief. The judge's conviction remains an essential element; however, it must be formed through a thorough analysis of all the evidence presented in the trial. This aligns with the principle of the negative proof system under the law (*negatief wettelijk bewijsstelsel*), where valid evidence must be combined with the judge's conviction to deliver a verdict.

The aim of this study is to analyze juridically the *testimonium de auditu* in the proof of criminal cases related to morality, specifically based on Article 289 jo Article

65 paragraph (1) of the Indonesian Criminal Code (KUHP), through a case study of Decision Number 1361/Pid.B/2022/PN.Sby. The main focus of this research is to evaluate the extent to which indirect testimony can be accepted and its strength assessed within the evidentiary system under the Indonesian Criminal Procedure Code. This study also examines the application of Constitutional Court Decision Number 65/PUU-VIII/2010, which expands the definition of a witness, and its impact on the legality of *de auditu* testimony in cases of child sexual offenses.

The uniqueness of this study lies in the analysis of cases where the judge issues a verdict based on the second alternative charge ([Article 289 of the Criminal Code](#)), rather than the primary charge under the Child Protection Act. Additionally, several witnesses in this case are other victims who have experienced similar actions by the defendant, further strengthening the pattern of evidence. Unlike previous studies that are textually normative, this research offers a progressive approach by emphasizing the flexibility in the acceptance of evidence in order to achieve substantive justice in sensitive cases.

## **Conclusion**

Based on the result and discussion conducted, it can be concluded that the acceptance of *testimonium de auditu* in criminal trial practice, as reflected in Decision Number 1361/Pid.B/2022/PN.Sby, demonstrates the flexibility of judges in interpreting the norms of proof law to achieve substantive justice. Although Article 185 paragraph (1) of the Criminal Procedure Code (KUHP) normatively requires that witness testimony must be obtained directly through sensory experience, in practice, judges still consider *de auditu* testimony as long as it is supported by other relevant evidence that strengthens and supports the construction of the criminal event in question.

The acceptance of *de auditu* testimony has received constitutional legitimacy through the Constitutional Court Decision Number 65/PUU-VIII/2010, which affirms that indirect testimony is not automatically prohibited in criminal trials, provided it is not used as the sole independent piece of evidence. Such testimony must be tested and correlated with other evidence. Moreover, the Constitutional Court ruling emphasizes the importance of flexibility in the evidentiary process, which is necessary to ensure justice and the discovery of material truth in legal proceedings.

Thus, this study supports the hypothesis that *testimonium de auditu* in certain cases can be used as a legally valid means of proof, as long as it remains within the boundaries of the integrity of the proof system and does not disregard the principles of a fair trial or the rights of the defendant. Furthermore, this study emphasizes the need to reformulate the legal interpretation guidelines for testimonial evidence under the Criminal Procedure Code, in order to provide legal certainty regarding the scope and limits of indirect testimony in criminal court practice.

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