

## Position of Verbal Witnesses as Evidence in Drug Criminal Cases

Warsito Kasim<sup>1</sup>

<sup>1</sup>Universitas Muhammadiyah Gorontalo, Indonesia

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### Abstract

Verbal witnesses are not recognized in the General Criminal Procedure Code (KUHP), but the use of verbal witnesses is indeed permitted in the context of Indonesian law, as long as it remains within the existing legal corridor. The existence of verbal witnesses in the examination process in court is not absolutely necessary, depending on how the examination process in court is going. If desired or if a defendant retracts what he stated in the BAP, then either the public prosecutor or on the initiative of the judge can submit verbal witnesses or investigator witnesses. In a court examination, the statement of the investigator's witness stated under oath can also be said to be a valid statement. The statement from this verbal witness is not only to refute the defendant's statement, but also one of the elements in which the judge forms a belief in the charges charged against the defendant. So we can often find that the statement of this verbal witness is used in the judge's decision in deciding a criminal case. However, the existence or extent of the evidentiary power of the verbal witness' statement in influencing the judge's belief does not have definite parameters.

**Keywords:** Evidence, Verbal Witness, Narcotics

### Introduction

Drug abuse is closely related to illicit trafficking as part of the world of international crime. The illicit trade mafia supplies narcotics so that people become dependent so that the supply increases. The relationship between the dealer/dealer and the victim makes it difficult for the victim to free themselves from the dealer/dealer, and it is not uncommon for the victim to also be involved in illicit trafficking because of their increasing need and dependence on narcotics (Martono & Joewana, 2005).

Cases of drug abuse and illicit trafficking are the cases most often brought up by law enforcement officers. From the statistical data on narcotics and psychotropic drug cases, it shows that from 2013-2015 there were 76,107 cases of drug abuse.

The intensity of drug crimes which is relatively high requires law enforcement officers to work hard in overcoming drug abuse and illicit trafficking. The term extra ordinary crime is used for narcotics crimes because narcotics abuse transactions are carried out covertly and the consequences of narcotics abuse are multidimensional or widespread, meaning they can attack anyone, anywhere and anytime.

With the enactment of Law Number 35 of 2009 concerning Narcotics, this provision revokes the provisions in Law Number 22 of 1997 concerning Narcotics, but does not revoke the provisions of Law Number 5 of 1997 concerning Psychotropics, but only revokes the provisions of Psychotropics Class I and II which are included in Narcotics Class I in Law Number 35 of 2009.

The birth of laws and regulations that adapt to the development of society certainly provides hope for the eradication of narcotics abuse and the law enforcement process that runs as it should. This shows Indonesia's seriousness in eradicating narcotics crimes.

Based on the Supreme Court Decision of the Republic of Indonesia Number: 1531 K/Pid.Sus/2010, the Narcotics case on behalf of the Defendant Ket San, where the Decision annulled the *judex factie* decision that had sentenced the defendant to 4 (four) years in prison. The Supreme Court annulled the *judex factie* decision by declaring the defendant Ket San not guilty and acquitted of all charges. One of the main considerations of the Supreme Court in its decision was regarding the position of the two police officers who arrested Ket San who were then presented as verbal witnesses at the trial. The Supreme Court stated that the witness statements from the two police officers were "Inadmissible and their truth is highly doubtful".

Furthermore, the Supreme Court Decision Number: 2588 K/Pid.Sus/2010, the Narcotics case on behalf of the defendants Frengki and Yusliadi, were declared not guilty and acquitted of all charges, with the legal consideration: "There is no discrepancy between the testimony of the Investigator's witness (verbal) with the evidence of other witnesses and evidence". Next, the Supreme Court Decision Number: 454 K/Pid.Sus/2011, the Narcotics case on behalf of the defendant Andika Tri Oktaviani, was declared not guilty and acquitted of all charges, with the legal consideration: "There is no agreement between the testimony of the Investigator's witness (verbalization) with the evidence of the testimony of other witnesses and evidence".

The Supreme Court Decision above can be said to be a very interesting decision because it disturbs the customs. Given the many incidents based on the Supreme Court's decision, it shows that in the interrogation process, investigators sometimes use violence so that witnesses or suspects admit their actions. The violence is as considered by the Supreme Court Justice in Decision No. 1531 K/Pid.Sus/ 2010 "That in order to find out who owns the goods (narcotics), the Defendant was forced to confess by the police by beating.

The description above shows that investigators conducting an investigation into a narcotics case and then testifying in court are susceptible to nuances of case manipulation or torture in obtaining witness or suspect statements. In addition, what needs to be considered is the conflict of interest between the investigator conducting the investigation and his status as a verbal witness in court. This conflict of interest can encourage the provision of non-objective testimony in court.

Based on the provisions of Article 184 paragraph (1) of the Criminal Procedure Code, evidence of witness statements is in first place. This has consequences when entering the evidence event before the court, the first thing that is always submitted is witness statements. However, among the witnesses who will be asked for information, the one that must be prioritized is the witness's statement.

What is meant by a witness based on the provisions of Article 1 number 26 of the Criminal Procedure Code is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case that he himself heard, saw and experienced.

In practice, evidence of the defendant's statement is always in last place. According to Article 189 paragraph 1 of the Criminal Procedure Code, the defendant's statement is what the defendant stated in court about the actions he committed or that he himself knew or experienced. Examining the defendant is not as easy as expected, because the defendant has the right to deny, and can admit something that is not true, especially if there is already a plan between the defendant and the witnesses, without the judge's wisdom the decision will be fatal (Nabila, 2023). In the process of resolving criminal acts, evidence is very closely related to Human Rights (HAM). It becomes very interesting when during the trial examination, it turns out that the suspect or witness then retracts all the statements that he has stated in the Examination Document (BAP) or does not match the BAP, even though the file is the initial

suspicion of the criminal act committed and used by the Public Prosecutor to make an indictment.

The process of proof in a trial becomes very interesting when during the examination, it turns out that the suspect or witness then retracts all the statements that he has stated in the Examination Document (BAP) or the statements they provide do not match the BAP, even though the file is the initial suspicion of the crime committed and used by the Public Prosecutor to make an indictment.

However, Article 185 paragraph (1) of the Criminal Procedure Code states that witness statements as evidence are what the witness states in court. Thus, the BAP as a result of the investigator's examination, both of witnesses and suspects, is nothing more than a guideline for the judge to carry out the examination. What is written in the BAP does not rule out the possibility of containing statements by the suspect that arise due to psychological conditions, confusion, or even coercion due to torture.

There are several reasons why a defendant withdraws a statement, for example: there is an element of threat or coercion from the investigator when conducting an examination, or also because of arbitrary treatment during the investigation so that in giving a statement, the defendant or witness is not free or feels pressured, which is clear then the existence of the above things actually makes the investigation in order to seek information about the crime committed become biased or unclear. Clearly this is a serious violation of the provisions of the applicable rules, because even in the examination process, the basic rights of the suspect or defendant must still be protected.

To overcome this, the examination does not stop there. To prove what the defendant did for withdrawing the statement made in the BAP, both the public prosecutor and the judge also often present witnesses from the investigators concerned with the case. These witnesses in court are often referred to as verbalisant witnesses (investigator witnesses).

Verbalisant witnesses are not recognized in the General Criminal Procedure Code (KUHAP), but the use of verbalisant witnesses in the context of Indonesian law is permitted, as long as it remains within the existing legal corridor. The existence of a verbal witness in the court examination process is not absolutely necessary, depending on how the court examination process is going. If desired or if a defendant retracts what he stated in the BAP, then either the public prosecutor or on the initiative of the judge can submit a verbal witness or an investigator's witness.

In a court examination, the statement of an investigator's witness stated under oath can also be said to be a valid statement. The statement from this verbal witness is not only to deny the defendant's statement, but also one of the elements in which the judge forms a belief in the charges charged against the defendant. So we can often find that the statement of this verbal witness is used in the judge's decision in deciding a criminal case. However, the existence or extent of the evidentiary power of the verbal witness' statement in influencing the judge's belief does not have definite parameters.

This study starts from the problem of using verbal witnesses as evidence of a criminal act in the trial examination process, with the object of this study being the statement of the verbal witness in the court examination process. The researcher chose the narcotics case because Narcotics Crime is the most frequently tried case in Court and most often presents Verbalisan witnesses. Furthermore, the discussion of this study will explain how statements from verbalisant witnesses can be used as evidence. In addition, this study will see the attitude of law enforcement officers, especially judges in using the available evidence.

## **Formulation of the problem**

This problem limitation is intended to further direct the research in accordance with the research objectives to be more specific and not deviate from the main problem. In this study, it is only limited to the following problems; (1) Have investigators as verbal witnesses in narcotics crime cases in court met the witness qualifications as regulated in the Criminal Procedure Code? (2) What is the position of verbal witnesses in proving narcotics crime cases?

## **Results and Discussion**

### **Investigators as Verbal Witnesses in Narcotics Crime Cases**

In principle, the information that must be given by a witness in court should be as similar or in line with the information that has been given in the investigation report as possible. However, this principle does not reduce the freedom of witnesses to give different information in court from the information given during the investigation examination. The freedom to give information in court for witnesses is not intended to reduce the meaning of the information they have given in the investigation report. Moreover, if their information in court is diametrically opposed and different from that explained in the investigation report, the judge must ask the witness for an explanation and reasons regarding this (Harahap, 2002). In this case, the meaning of freedom to give information in court is directed at the attitude and physical and psychological condition of the witness in giving information in court.

Proof according to general understanding is to show the front about a condition that is in accordance with the main problem, or in other words, to find a match between the main event and the roots of the event (Hartono, 2010).

The Indonesian criminal evidence system in the Criminal Procedure Code still adheres to the negative *wettelijk* system, in criminal evidence, namely according to Article 183 of the Criminal Procedure Code which reads as follows, "A judge may not impose a sentence on a person, unless with at least two valid pieces of evidence he obtains the conviction that a crime actually occurred and that the defendant is guilty of committing it". So it can be concluded that the judge's power has been limited by a provision that is not free. Where these limitations can be distinguished, among others: (a) Limitation of power based on beliefs based on logical reasons; (b) Limitation of power based on beliefs based on the Law (Hamzah, 2006).

Therefore, the evidence must be based on the law (KUHAP), namely the valid evidence mentioned in Article 184 of the KUHAP, accompanied by the judge's conviction obtained from the evidence (Hiariej & SH (Hiariej & SH, 2012). Every human act that is suspected of fulfilling the elements of a crime/criminal act must be able to be proven by the state. In Article 184 paragraph (1) of the KUHAP, valid evidence includes: (a) Witness testimony, namely according to Article 1 number 27 of the Criminal Procedure Code, states that witness testimony is one of the means of evidence in a criminal case in the form of information from a witness regarding a criminal event that he/she heard himself/herself, saw himself/herself and experienced himself/herself by stating the reasons for his/her knowledge (Hiariej & SH, 2012); (b) Expert testimony, according to the Criminal Procedure Code, is information given by someone who has special expertise about things that are needed to clarify a criminal case for the purposes of examination. Expert testimony is declared valid as evidence if stated in court and under oath; (c) Written evidence, which can be accepted as evidence is listed in Article 187 of the Criminal Procedure Code; (d) Indicative evidence, namely an act, event or condition that because of its conformity, either between one and the other or with the crime itself, indicates that a crime has occurred and who the perpetrator is. These indications can only be obtained from witness statements, letters, and statements from the defendant; (e) The defendant's statement, or is equated with confession evidence, which according to the

Criminal Procedure Code is what the defendant stated in court about the act he/she did or that he/she knew himself/herself or experienced himself/herself.

The definition of witness testimony is formulated in Article 1 point 27 of the Criminal Procedure Code, which states that witness testimony is one of the means of evidence in a criminal case in the form of information from a witness regarding a criminal event that he himself heard, saw himself and experienced himself by stating the reasons for his knowledge. From the statement above there are three benchmarks for the responsibility of witness testimony, namely: (a) Seeing; (b) Hearing; (c) Experiencing.

Therefore, the basis of the evidence is a descriptive narrative representation of events, incidents, or situations that actually took place, seen by the eyes, heard by the ears, and experienced by the witness himself (Hamzah et al., 2001).

Witness testimony is the main evidence referred to in Article 184 of the Criminal Procedure Code. Special rules regarding witness testimony are only regulated in one article, namely Article 185, which among other things explains what is meant by witness testimony, how about the strength of its evidence and others.

In principle, the information that must be given by a witness in court, as much as possible the same or in line with the information he has given in the investigation report. However, this principle does not reduce the freedom of witnesses to provide different information in court from the information given during the investigation examination. The freedom to provide information in court for witnesses is not intended to reduce the meaning of the information he has given in the investigation report. Moreover, if the testimony in court is diametrically opposed and different from that described in the investigation report, the judge must ask the witness for an explanation and reasons regarding this matter (Harahap, 2002).

The meaning of being free to give testimony in court, refers to the attitude and physical and psychological condition of the witness, namely in giving testimony in court, namely (Maulidianti, 2023): (a) without influence and coercion from any party; (b) questions asked to him must be in a language that is clear and easy for him to understand, so that the answers given are truly answers that come from his conscience according to his level of intelligence; (c) it is forbidden to ask questions that trap the witness, namely statements that have never been stated by the witness, but are considered as if they had been stated by the judge or public prosecutor. Questions that trap like this violate the witness's freedom to give testimony.

Witnesses may provide statements that differ from those contained in the investigation report. However, they must provide reasons that are acceptable to common sense. The difference between the two statements must be based on reasons that are able to confirm the truth of the difference.

This is regulated in Article 163 of the Criminal Procedure Code, which provides guidelines for the chairman of the trial on the procedures for regulating the problem of differences in statements. If during an examination at a court hearing, a witness provides information that differs from that given in the investigation report, the procedures that the judge can take are (Nikmah, 2020): (a) Remind the witness of the difference, the Judge is not allowed to remain silent if during the examination in court a witness gives a statement that is different from what is stated in the investigation report. The chairman of the trial must warn the witness of the difference; (b) If the chairman of the trial has warned the witness, but still adheres to the statement he gave in court, the judge asks for information regarding the difference between the two statements in question; (c) Then the statement and reasons given by the witness are recorded in the trial report.

In judicial practice, there are often very striking differences between the statements given by witnesses in court and those given in front of investigators. If asked why the witness gave a different statement. The common answer and reason is because during the investigation examination, the witness was threatened and dictated according to the investigator's wishes.

The Criminal Procedure Code does not regulate witness statements that are withdrawn/revoked in court. If examined in more depth, detail and in detail as stated in Article 163 of the Criminal Procedure Code, the witness's statement in court is different from his statement in the Investigation Report/BAP made by the investigator. If a witness withdraws/retracts his/her statement in the investigation report prepared by the investigator, the provisions of Article 185 paragraph (1) and (6) of the Criminal Procedure Code apply, the principle of which is that witness statements as evidence are what the witness states in court (Mulyadi, 2012). If during the trial, the defendant withdraws his/her statement during the investigator's examination (investigation report) or refuses, often the investigator who examined the defendant in the case is called to the trial to be a witness, this witness is then called a verbal witness (Sasangka & Rosita, 2003).

Fundamentally, the word verbalisan is a term that commonly grows and develops in practice and is not regulated in the Criminal Procedure Code. According to the meaning of the lexicon, verbalisan is a person (investigator) who carries out the verbal process (investigation). Verbalisan can also be a name given to an officer (police or given to a special officer), to compile, create or compose a report. Meanwhile, according to J.C.T. Simorangkir, Edwin Rudy and Prasetyo JT determine that "verbalisant (Bld) is an Officer (Police or someone who is given a special task) to compile, create or compose a verbal process.

Thus, when viewed from the vision of judicial practice, the existence of verbalisan witnesses appears if in the trial the defendant denies/denies the witness's statement and then the witness/defendant's statement in the court hearing is different from his/her statement in the Investigation Report made by the Investigator and the defendant/witness withdraws his/her statement in the Investigator's Investigation Report due to physical or psychological pressure.

So to answer the witness/defendant's denial, the public prosecutor can present a verbalisan witness (investigator's witness). However, often when the defendant uses pressure or torture as an excuse to withdraw the BAP, investigators generally deny it. It can be said that verbal witnesses almost never admit their actions. However, in examining a verbal witness, the judge of course must not immediately believe the testimony of the verbal witness or reject the testimony given.

Based on the results of the examination of the verbal witness, the judge also needs to consider whether the reasons and statements given by the witness can support the differences in the testimony given. If the difference in testimony is truly in line with the reasons given by the witness, and the reasons are acceptable to the judge. The testimony given by the witness in court is used by the judge to formulate considerations. However, if the difference in testimony is without a reasonable reason, the judge can consider the testimony to be untrue, and the judge can still consider the testimony contained in the investigation report to be correct, so that the testimony contained in the investigation report used by the judge to formulate considerations (Sudiarta et al., 2022).

To overcome this problem, the Public Prosecutor will usually present an investigator as a witness to be questioned at trial. This witness is then called a verbal witness.

A verbal witness or called an investigator's witness is an investigator who then becomes a witness in a criminal case because there is a difference between the defendant's/witness's statement stated in court and that contained in the investigation report, or because the defendant

denies and withdraws his/her confession stated before the investigator on the grounds that the Investigation Report was made under pressure or coercion. In other words, the defendant/witness denies the truth of the BAP made by the investigator concerned.

The denial/revocation of the statement indicates an indication of fabricated information. Therefore, to further reveal the circumstances during the investigation process, it seems necessary to present the investigator as a witness, so that information is obtained during the investigation. Therefore, on the initiative of the Public Prosecutor, the investigator's witness (verbalis) was presented to the trial to provide information.

Based on the description above, the author concludes that a verbalis witness can be presented if during the court hearing the witness and/or defendant denies the information contained in the investigation report due to the alleged element of psychological or physical pressure from the investigator at the time of making the Investigation Report, causing the legal facts obtained in the court hearing to become unclear. The role of the verbalis witness is to test the defendant's/witness' denial of the truth of the Investigation Report.

Judges should distance themselves from prejudice, but must be vigilant. Judges should test and assess wisely and objectively the reasons put forward by the witness. Witnesses may provide information that is different from that contained in the investigation report. However, they must provide reasons that are acceptable to common sense.

For that, it is necessary to explore further whether the reason for the revocation is reasonable and logical or not. The reason needs to be examined further by presenting the investigator as a witness in the examination at the trial.

When the witness/defendant denies the BAP made by the investigator during the investigation. In this case, the prosecutor's purpose in presenting the verbal witness is none other than to break the alibi made by the witness/defendant during the trial, when the witness/defendant revokes/denies the entire BAP. The reason the witness/defendant denies the BAP made by the investigator is because during the investigation the witness or defendant was pressured to admit it, even physical or psychological violence.

When viewed from the habits that occur in trials, every time a witness/defendant revokes a statement related to coercion or torture during the investigation, it is certain that the first action of the judge in responding to this revocation is to summon the verbal witness, in order to carry out a cross-check or clarification with the investigator, in order to prove the truth of the reason for the revocation of the witness/defendant's statement. By knowing firsthand the information from the verbal witness regarding the process and procedures of the examination carried out by the investigator, the judge will know whether there was any coercion or threats against the defendant during the investigation.

If it turns out that from the results of the clarification it is known that it is true or proven that there has been coercion, threats and torture against the witness or defendant, then the reason for the withdrawal can be accepted, so that the information contained in the BAP is considered untrue, and that information (BAP) cannot be used as a basis for helping to find evidence in court. On the other hand, if from the results of the clarification it is known that there was no coercion, threats and torture against the witness or defendant, then the reason for the withdrawal is not justified, so that the defendant's confession statement contained in the BAP is still considered true and the judge can use it as a tool to help find evidence in court. Basically, a judge should not immediately believe the testimony of a verbal witness, because it is possible that the statement from the investigator also contains elements of lies, to avoid this, the judge has several principles that are the basis for the judge in assessing the truth of the testimony of a verbal witness, including: (a) By swearing. The oath is made according to the religion or

belief of the verbal witness, the oath aims so that the verbal witness does not lie or make false statements in giving his statement. Because the oath is made in the name of God, it is believed that after being sworn in, the verbal witness will not provide false or false statements, with the assumption that if the verbal witness provides false or false statements, he will receive direct punishment from God. However, it turns out that an oath alone is not enough to prove the truth of the verbal witness's statement and does not fully guarantee the truth of the verbal witness's statement, because in reality it is still possible for the verbal witness to provide false or false statements even though he has been sworn in. Apart from that, at least the oath is able to provide additional confidence for the Judge in assessing and believing the truth of the verbal witness's statement; (b) Connecting the verbal witness's statement with other evidence; Even though he has been sworn in, the judge does not have to immediately believe the verbal witness's statement, because it is possible for the verbal witness to provide false or false statements. Therefore, an oath alone is not enough for the judge to believe the verbal witness's statement, but must be supported by statements from other evidence related to the truth of the verbal witness's statement.

With the conformity between the testimony of the verbal witness and the testimony of other evidence, the judge will feel more confident in believing the testimony of the verbal witness. So it is important for the judge to analyze and find the relationship between the testimony of the verbal witness and the testimony of other evidence, in order to truly believe in the truth of the testimony of the verbal witness; (c) Trust in the code of ethics of each position. Every law enforcer must have professional ethics according to their position. In addition, law enforcers are also obliged to carry out their positions in accordance with their professional code of ethics. For law enforcers themselves, there is a code of ethics that must be obeyed and upheld as a guideline in carrying out their duties as law enforcers. One of the codes of ethics of law enforcers is the obligation to act honestly, respect each other and help each other between fellow law enforcers.

Based on this, it can be understood that as law enforcers, judges and investigators (police) must trust each other, respect each other and help each other or work together in enforcing the law. On that basis, the judge feels that he can trust the testimony of the verbal witness, because the judge considers that the investigator in providing the testimony must be based on the code of ethics of the law enforcement corps, namely honesty, so that it is impossible to provide false statements or false statements that can tarnish the honor of the law enforcement corps. Based on the description above, it can be concluded that in fact the judge should not immediately believe the testimony of the verbal witness, and use it as a basis for rejecting the revocation of the witness or defendant's statement, because if the judge only believes the testimony of the verbal witness, then it can be said that the judge tends to be unfair because of its subjective or one-sided nature.

If the judge believes the testimony of a verbal witness without considering other things, it is feared that it could be detrimental to the defendant. For this reason, the judge needs to consider other considerations before deciding to accept the testimony of the verbal witness, because the problem of withdrawing the testimony of a witness/defendant in front of the investigator lies entirely on the judge's shoulders, so the judge must really consider this withdrawal wisely and prudently. One of them is by looking at and looking for the relationship between each piece of evidence, evidence and facts during the trial.

By assessing and looking for the relationship between each piece of evidence, evidence, and facts during the trial, the judge will obtain useful clues in considering whether or not the withdrawal is accepted, more than that the judge will gain confidence in assessing the defendant's guilt, so that there is no doubt in the judge when passing a criminal sentence. As

an illustration of the importance of the judge to look for the relationship between each piece of evidence, evidence and facts during the trial in responding to the withdrawal of testimony by the witness.

Therefore, it is very important for the judge to analyze and find the relationship between the testimony of the verbal witness and the testimony of other evidence, in order to gain confidence in the truth of the testimony of the verbal witness.

The implications of the revocation/denial of the statement can be known after the judge's assessment of it, whether the judge accepts or rejects the reasons for the revocation/denial of the statement from the defendant or witness. If the judge accepts the reason for the revocation, it means that the statement contained in the investigation report is considered "untrue" and the statement cannot be used as a basis for helping to find evidence in court. On the other hand, if the reason for the revocation cannot be justified, the statement contained in the investigation report is still considered true and can be used as a basis for helping to find evidence in court. The judge considers that the statement of the defendant/witness in front of the investigator contains elements of truth, while the statement of the defendant/witness in court that denies all the contents of the BAP is considered untrue and has no value at all in proof.

Based on the discussion above, it can be seen that to assess the extent of the strength of the evidence of the verbal witness as evidence in court cannot be separated from other evidence.

Based on the author's observations, the following can be studied: (1) The value or strength of the evidence given by the verbal witness in this case is not perfect and is free. This means that the testimony of the verbal witness in this case does not determine and is not binding for the judge to reject or accept the reasons for withdrawing the defendant's/witness's statement. The judge is not bound by the strength value contained in the testimony of this verbal witness. The judge is free to assess the truth contained therein. The judge can accept or remove it by stating his reasons; (2) Must be supported by other evidence and meet the minimum limit of evidence. Even if the testimony of the verbal witness is valuable, it must be supported by other evidence examined in court. In addition, it must also meet the minimum limit of evidence in accordance with Article 183 of the Criminal Procedure Code, namely that the judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the conviction that a crime actually occurred and that the defendant is guilty of committing it.

### **The Position of Verbal Witnesses in Proving Narcotics Crimes**

Evidence is a very important part and also becomes the central point of the examination of a case in a court hearing. This is because evidence contains provisions in the form of guidelines on the methods permitted by law to prove the guilt charged to the defendant. The guidelines for the procedure for evidence used in the Indonesian judicial system are the theory of the negative legal system of evidence (Negatief Wettelijk Stelsel) which is emphasized in the provisions of Article 183 of the Criminal Procedure Code.

Article 183 of the Criminal Procedure Code: A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the conviction that a crime actually occurred and that the defendant is guilty of committing it.

Proof of domestic violence is the same as other crimes, using the provisions and procedures contained in the Criminal Procedure Code. This provision is explained in Article 73 of Law Number 35 of 2009 concerning Narcotics which states that: "Investigation, prosecution, and examination in court of the abuse and illicit trafficking of Narcotics and Narcotics Precursors are carried out based on statutory regulations, unless otherwise specified in this Law."

Thus, the proof of domestic violence crimes uses the minimum principle of proof adopted by the Criminal Procedure Code and evidence that is considered valid according to the law.

Based on the provisions of Article 184 paragraph (1) of the Criminal Procedure Code, the law determines five types of valid evidence that are mentioned in detail or in a limited manner, namely: (a) Witness statements; (b) Expert statements; (c) Letters; (d) Instructions; (e) Defendant's statement.

According to M. Yahya Harahap, if the provisions of Article 183 of the Criminal Procedure Code are connected to the types of evidence mentioned in Article 184 paragraph (1), then the minimum evidence that can be considered sufficient to prove the defendant's guilt, "at least" or "at least" proven by "two" valid pieces of evidence.

Clearly, to prove the defendant's guilt must be: (a) The addition of at least one witness plus an expert or letter or instructions, with the provision that the addition of the two pieces of evidence must "correspond", "reinforce each other", and not contradict each other; (b) Or it could also be, the addition of the two pieces of evidence in the form of statements from two witnesses that correspond and reinforce each other, or a combination of the testimony of a witness with the testimony of the defendant, as long as the testimony of the witness with the testimony of the defendant clearly corresponds to each other.

The judge in assessing the defendant's guilt uses evidence in the form of witness statements, letters, and the defendant's statement. Among several witnesses who were brought before the trial by the Public Prosecutor, they also presented verbal witnesses (investigator witnesses).

Verbalisan Witness is a witness from the investigator who is presented to test the defendant's denial of the contents of the Investigation Report (BAP). In general, the defendant denies the contents of the BAP due to pressure or coercion against the suspect during the investigation process. Therefore, if in the process of providing evidence it is discovered that there is an element of coercion carried out by the investigator, the investigator concerned can be subject to criminal sanctions under Article 422 of the Criminal Code.

Article 422 of the Criminal Code states that:

"An official who in a criminal case uses coercion, either to extort a confession or to obtain information, is threatened with a maximum imprisonment of four years."

Although this verbalisan witness has not been regulated in the Criminal Procedure Code or other laws and regulations, in practice this verbalisan witness is often presented in court. The background to the existence of verbalisan witnesses is contained in the provisions of Article 163 of the Criminal Procedure Code.

Article 163 states that:

"If the witness's statement in court is different from his statement in the minutes, the presiding judge of the trial will remind the witness about it and ask for information regarding the differences and record it in the minutes of the trial examination".

The summons of the verbal witness (investigator) is considered necessary by the Panel of Judges because of the witness' or defendant's objection to the contents of the BAP. So the Panel of Judges needs to summon the investigator's witness who is examining the defendant, to obtain information related to the course of the investigation process against the suspect, whether the investigator committed violence to obtain a confession from the witness.

According to R. Soesilo's opinion that:

In accordance with the accusatoir nature of our criminal procedural law, before there is a final judge's decision, a defendant must still be considered as an innocent person. Investigators must act objectively both in preliminary examinations and in examinations in court.

Article 8 of Law Number 48 of 2009 concerning Judicial Power states that "Any person who is suspected, arrested, detained, charged, and/or brought before a court must be considered innocent before there is a court decision that declares his guilt and has obtained permanent legal force." Therefore, even though in the examination the investigator has more or less obtained certainty of the defendant's guilt, the investigator has no right to insult, abuse or commit other forms of violence against the suspect. Such actions by the investigator can lead to misleading judges' decisions which result in not convicting the wrong person or conversely, which is more fatal, convicting an innocent person.

The principle adopted by the Criminal Procedure Code is that information that has value as valid evidence is information stated by witnesses or defendants before the trial. So that in practice in general the Panel of Judges prioritizes the statements of witnesses or defendants stated under oath in the trial process. However, this does not mean that the statements of the defendant or witnesses obtained during the preliminary examination or investigation stage are not used as considerations by the Panel of Judges. As long as the information provided is in accordance with other evidence, the information can be used as a guideline for improving other evidence. This is in accordance with the Supreme Court Decision dated September 20, 1977 No. 177 K/Kr/1965 which confirms: "that the confessions of defendants I and II before the police and prosecutors, reviewed in relation to each other, can be used as a guideline to determine the guilt of the defendant". Verbal witness statements, like other evidence, have independent evidentiary value. Therefore, it is the duty and responsibility of the Panel of Judges themselves to assess the suitability between the verbal witness's statement and other evidence submitted to the trial, be it witness statements, expert statements, written evidence or the defendant's statement.

### **Conclusion**

The use of verbal witnesses (investigator witnesses) in the process of proving criminal cases is necessary if during the court hearing the witness and/or defendant denies the statement in the investigation report due to elements of coercion or pressure, either in the form of mental or physical pressure from the investigator at the time of making the investigation report, causing the legal facts obtained in the court hearing to become less clear. If the witness's statement stated in the court hearing is different from the statement stated before the investigator, or the defendant denies and withdraws his statement stated in the investigation report, then with such circumstances, it is the reason used by the Public Prosecutor to present verbal witnesses in court to clarify or provide information related to the investigation that he has handled. The evidentiary power of verbal witnesses as evidence in court is free, not binding and not decisive for the judge. The judge is not bound by the value of the strength contained in the statement of this verbal witness. The judge is free to assess the truth contained therein. Also, the strength of verbal witnesses in their use cannot stand alone but must also be supported by other evidence. If the verbal witness's statement is in accordance with other evidence, then the verbal witness's statement can have value and can be used to refute the witness's denials in the trial. consider its suitability with witness statements and other evidence. In the end, all of the evidence will shape the judge's confidence in deciding a criminal case.

## Suggestion

The public prosecutor should receive a summons after the investigation process has begun to supervise the examination process at the investigation level so that later in the trial, denial or withdrawal of statements by the defendant or witnesses can be avoided so that later verbal witnesses do not need to be present in the trial process. Supervision in this case functions to minimize acts of abuse of authority, and to speed up the trial process as in the principle of a speedy trial. Evidence of verbal witness statements should also be specifically regulated in the Criminal Procedure Code, because this is also related to the enforcement of Human Rights in the justice system in Indonesia, especially the rights of suspects during the investigation process.

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