Jurnal Yustisia
Merdeka
p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-*80*

The Importance of Witness A De Charge as Evidence for the Defendant in the Crime of Domestic Violence (KDRT)

(Case Study of Decision No. 3339/Pid.Sus/2018/PN.Sby)

Hikmah Istiqomah [1*], Waluyo [2]

[1] *Fakultas Hukum, Universitas Pembangunan Nasional "Veteran" Jawa Timur, Kota Surabaya*
[2] *Fakultas Hukum, Universitas Pembangunan Nasional "Veteran" Jawa Timur, Kota Surabaya*

*Corresponding Author: *Hikmahist13@gmail.com* [1*]

Abstract

Introduction to the Problem: The law was created to regulate and protect all components of society. The preamble of Law of the Republic of Indonesia Number 8 of 1981 point C concerning Criminal Procedure Law explains that national development in the field of criminal procedure law is intended to make the community appreciate their rights and obligations and to improve the attitude of law enforcers and the protection of human dignity, order and legal certainty for the implementation of the rule of law in accordance with the 1945 Constitution.
Purpose/Study Objectives: This research aims to find out how important the position of witness a de charge is for the defendant in the crime of domestic violence.
Design/Methodology/Approach: This research uses normative juridical research methods. Data collection was carried out by means of literature and document studies. Data analysis was carried out using analytical descriptive methods and using a qualitative approach.
Findings: The results showed that there is a right to submit witnesses or experts that have been given by the law by the suspect or defendant as referred to in Article 65 of the Criminal Procedure Code, so that the examiners at all levels of examination are obliged to ask the suspect or defendant, but there is no obligation for the defendant to present witnesses in the trial so that it will not affect the legal status of the defendant.
Paper Type: Research Article
Keywords: Criminal acts of domestic violence; Witness A De Charge; Rights and Obligations.

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-80

Introduction

Indonesia is a state of law which always upholds the law in the life of the nation and state. This is as stated in the 1945 Constitution of the Republic of Indonesia regarding the state government system which states that Indonesia is a state based on law *(rechstaat).* The thought of the concept of rechstaat Julius Stahl as quoted by Miriam Budihardjo, suggests the elements of the rule of law consist of: a) the recognition of the human rights of citizens; b) the separation or division of state power to guarantee human rights, commonly known as Trias Politika; c) government based on regulations (*wetmatigheid van bestuur*) and; d) the existence of administrative justice in disputes over the protection of human rights. (Frederick Julius Stahl, 2001)

Criminal law in Indonesia is divided into material criminal law and formal criminal law. The formal law in Indonesia is regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as KUHAP in this thesis) unless otherwise regulated in more specific regulations. KUHAP regulates the procedures for criminal proceedings both from investigation and investigation in the police to prosecution by the public prosecutor and examination at trial by the judge. KUHAP is the basis for law enforcement agencies in Indonesia to conduct criminal proceedings for someone who is considered to have violated applicable regulations. The formal criminal law is a variety of legal regulations that include the procedure for criminal cases, then the material criminal procedure law is a variety of legal regulations regarding the system and tools of burden of proof as well as scientific means that support proof. (Bambang Poernomo,1993)

This has the consequence that the actions of law enforcement officials must not only be based on fair material legal norms, but must also be based on formal law which regulates procedures for enforcing material legal provisions that meet the requirements of justice. Both material law and formal law must be fair, thus of course Indonesia wants the community, apparat and state apparatus to be organized, obedient and in accordance with the rule of law based on the laws and regulations in force in Indonesia, so as to create order, order, and security of the country and to realize it requires good law enforcement. Laws are created to regulate and protect all components of

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-*80*

society. The preamble of Law of the Republic of Indonesia Number 8 Year 1981 point C on Criminal Procedure Law states that: "National development in the field of criminal procedure law is intended to make the community appreciate their rights and obligations and to improve the attitude of law enforcers and the protection of human dignity, order and legal certainty for the implementation of the rule of law in accordance with the 1945 Constitution".

One of the most basic rights for humans is the right to security from dangers that threaten their safety. This right is the most basic right that must be guaranteed and protected by law, so that they feel safe to carry out their obligations without fear and if this right has been obtained, the community will feel that their dignity as human beings is respected. Fundamentally, everyone has the right to obtain justice, as mentioned in Article 17 of Law No. 39/1999 on Human Rights, which states that; "every person without discrimination, has the right to obtain justice by filing applications, complaints and counterclaims in criminal, civil and administrative cases and to be tried through a free and impartial judicial process, in accordance with procedural law that guarantees an objective examination by an honest and fair judge to obtain a fair and correct decision".

It also applies to people who have been suspected of committing crimes, crimes, or violations, even those who have been proven guilty, they still have to get protection of their human rights as individuals or humans such as defendants, in the practice of examining criminal cases the most basic thing is about the rights of the defendant both from the level of investigation to the level of justice, If these rights are violated, then the human rights of the suspect or defendant have been violated and of course the same as a violation of human rights, in Article 28 I paragraph (5) of the 1945 Constitution has also explained that "the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government".

This right is realized in the practice of criminal procedure law, where there are rights of suspects or defendants that need to be considered. The rights of the suspect/defendant in KUHAP include: The right to immediately receive an examination, the right to be informed in a language that he understands, the right to give testimony freely, the right to obtain the assistance of an interpreter, the right to obtain legal assistance, the right to contact legal counsel, and so on. One of them is to seek and submit a mitigating witness/expert witness or a favorable witness called a witness a de charge,

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-80

which is contained in the provisions of Article 65 of the Criminal Procedure Code.

Witness *a de charge* is a right given to the defendant, the defendant can present a witness *a* de charge in the trial if the defendant feels that the witness *a de charge* can benefit the defendant. Witnesses *a* de charge are an important part of the evidentiary process in court, because witnesses *a* de charge can balance the evidence presented by the public prosecutor who has charged the defendant, the position between witnesses a *charge* and *a de* charge is the same in court, the testimony between witnesses *a charge* and *a de charge* can assist the judge in handing down a decision to the defendant. The evidentiary power of the witness a *de* charge is the same as that of the witness *a charge*, because in essence the Criminal Procedure Code has stipulated that witness testimony is one of the strongest pieces of evidence, both the witness a *charge* and the witness *a de charge*. The public prosecutor has the right to present incriminating witnesses, as well as the defendant has the right to present witnesses who alleviate the charges of the public prosecutor or even waive the charges of the public prosecutor.

Guarantees and protection of human rights have been regulated by law, one of which is manifested in the form of legal protection of the rights of suspects, but this has not been fully implemented, not least in the field of law enforcement itself, in practice often not all criminal cases that are tried present a mitigating witness or witness *a de charge* , because the defendant does not know, or indeed the defendant does not submit a mitigating witness or other reasons that allow the absence of mitigating witnesses in a criminal case that is tried.

There are several criminal cases where during the trial process no witnesses *a de charge* or witnesses who mitigate for the defendant are presented, one of which is a case of domestic violence (KDRT). According to data obtained from the Directory of Decisions of the Supreme Court of the Republic of Indonesia accessed at *putusan.mahkamahagung.go.id*, there are several cases of domestic violence (KDRT) in which the trial process did not present a *de charge* witness or a mitigating witness. Such as Decision No. 3339/Pid.Sus/2018/PN.Sby; Decision No. 1235/Pid.Sus/2017/PN.SDA; Decision No. 180/Pid.Sus/2020/PN.SDA. The three decisions, in the trial process, did not present witnesses *a de charge* or witnesses who mitigated the defendant so that the defendant could not get the lightest sentence possible.

One example of a case that the author will examine is the case of a decision on a case of domestic violence (KDRT) Decision No. 3339/Pid.Sus/2018/PN.Sby.

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-*80*

The chronology of the case is that the defendant KARYANTO bin PONIMAN on Monday, April 02, 2018 at approximately 10:00 WIB in room no. 3 on the fifth floor of Rusunawa Jambangan Surabaya within the jurisdiction of the Surabaya District Court has been proven legally and convincingly guilty of committing the crime of "committing acts of physical violence within the scope of the household" as in Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence against the defendant's legal wife, NOVI ERAWATI. As a result of the defendant's actions, the victim witness felt pain to her body as described in the Visum et Repertum Letter Number: VER/162/IV/2018 Rumkit dated April 02, 2018 from Bahayangkara H.S SAMSOERI Hospital Surabaya. The decision stated that the Defendant KARYANTO bin PONIMAN was sentenced to 6 (six) months imprisonment and charged the defendant to pay court costs of Rp. 2,000, - (two thousand rupiah). However, what is a problem in this decision for the author is that during the trial, the Defendant did not present a witness *a de charge* so that the Defendant received a criminal sentence of 6 (six) months imprisonment, which should be if the Defendant presents a witness *a de charge* the sentence for the Defendant will be lighter, because in essence the witness is a witness.

Considering the importance of the role of witnesses *a de charge* for the defendant as evidence, the defendant should be guaranteed protection of the right to present witnesses *a de charge* in accordance with Article 65 of the Criminal Procedure Code. Protection of the defendant's right to present witnesses *a de* charge is very important in the criminal justice process, this is in line with the legal principles contained in the constitution where every citizen is equal before the *law (equality before the law).* This is to provide a guarantee of protection and legal certainty to ensure the existence of a good criminal justice process *(due process of law)* and create a *fair* and clean court that can create a sense of justice in the community. Based on the background description above, the author is interested in conducting research and to find out more about the implications of the defendant's right to present a mitigating witness or witness *a de charge* and how its strength as evidence in the case of criminal acts of Domestic Violence (KDRT).

Methodology

The type of research used in this research is normative juridical with a statutory approach that is guided by laws and regulations, books or legal literature as well as materials that have a relationship to the problems and discussions in writing this thesis. Normative legal research is legal research that uses secondary data sources. This research method, places the law as a

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-80

system of norms referred to regarding principles, norms, rules, laws and regulations, court decisions, agreements and doctrines (Soejono and Abdurrahman, 2005). This research combines various kinds of information sourced from primary, secondary and tertiary data sources. This type of normative legal research is used in order to find the truth of coherence related to laws and regulations that are already in force in accordance with legal norms. The legal norms will later be examined to ascertain whether the legal norms are in accordance with the legal principles applicable in Indonesia. The main legal principle is to realize justice, which in this legal issue if a defendant in a domestic violence case has the right to present a mitigating witness (*A de Charge)* but not presenting the witness creates legal injustice. Therefore, the main focus in this research is the conformity between the applicable laws and regulations. This research certainly requires the following.

Results and Discussion

THE RIGHTS OF THE DEFENDANT IN A CASE OF DOMESTIC VIOLENCE BASED ON DECISION NO. 3339/PID.SUS/2018/PN.SBY

According to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by allocating a human right the power to act in the context of that interest (Satjipto Rahardjo,2006).

Witnesses a de charge are witnesses presented by the defendant to provide testimony that can alleviate or defend him from the charges against him. Witnesses a de charge are regulated in Article 116 paragraph (3) of the Criminal Procedure Code as one of the rights of the defendant in the investigation. Witnesses a de charge are different from witnesses a charge, who are witnesses presented by the prosecution to provide information that can incriminate or support the charges against the defendant.

In domestic violence trials, witnesses a de charge can play an important role in proving that the defendant did not commit the crime of domestic violence, or that there are reasons that can exonerate, remove, or reduce his criminal responsibility (Lamintang, P.A.F, and Theo Lamintang, 2010). For example, a witness a de charge may testify that the defendant did not have malicious intent, or that the defendant acted under duress, or that the defendant has apologized and reconciled with the victim. However, witnesses a de charge also have limitations and challenges in domestic violence trials (Lamintang, P.A.F, and Theo Lamintang, 2010). First, a de charge witness must meet the requirements of a legitimate witness, namely a person who can provide information for the purpose of investigation, prosecution, and trial about a

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-*80*

criminal case that he himself heard, he himself saw, and he himself experienced, or a person who has knowledge that is directly related to the occurrence of a criminal offense by mentioning the reasons for his knowledge. Secondly, a witness a de charge must provide testimony that is honest, objective, and relevant to the case being examined. Third, the witness a de charge must be able to convince the judge that his testimony is stronger and more reliable than the testimony of the witness a charge or other evidence submitted by the public prosecutor.

One of the challenges that witnesses a de charge often face in domestic violence trials is their credibility. Often, witnesses a de charge are people who have a close relationship with the accused, such as family, relatives, friends, or neighbors. This can raise doubts or suspicions from the judge or public prosecutor that the witness a de charge is not providing true testimony, but only wants to help or protect the defendant (Satjipto Raharjo, 2009). Therefore, witnesses a de charge must be able to prove that their testimony is not influenced by affective factors, emotions, or personal interests, but is based on real and verifiable facts and evidence.

In addition, the witness a de charge must also face the challenge of the nature of domestic violence itself, which is a criminal offense that is private, secret, and difficult to prove. Domestic violence often occurs within the household, behind closed doors, without eyewitnesses or clear physical evidence (Satjipto Raharjo, 2009). This can make it difficult for the witness a de charge to provide testimony that can refute or contradict the testimony of the witness a charge, especially the victim witness, who is usually considered the witness who knows best and is most affected by domestic violence. Therefore, the witness a de charge must be able to provide detailed, specific, and consistent testimony, and be supported by other relevant evidence, such as sound recordings, videos, photographs, letters, or documents.

Thus, witnesses a de charge have roles, limitations, and challenges in domestic violence trials. Witnesses a de charge can be an effective defense tool for the defendant, if they can provide legitimate, honest, objective, relevant, strong, and reliable testimony. However, witnesses a de charge must also face various obstacles and hurdles, both from legal requirements, and from the nature of domestic violence itself. Therefore, witnesses a de charge must be well prepared, both by the defendant and by their legal counsel, in order to provide optimal and useful testimony for the defendant in a domestic violence trial.

So based on Decision Number 3339/Pid.Sus/2018/PN.Sby related to the criminal case of domestic violence, there is also legal protection for the

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-80

defendant regarding the rights that must be given to the defendant regardless of his guilt and actions. Based on Decision Number 3339/Pid.Sus/2018/PN.Sby, the Defendant Karyanto was charged by the Public Prosecutor with Subsidiary charges, namely Primair Article 44 paragraph (1) of Law Number 23 Year 2004 on the Elimination of Domestic Violence, Subsidiary Article 44 paragraph (4) of Law Number 23 Year 2004 on the Elimination of Domestic Violence. As long as he is still in the court process, Article 184 of the Criminal Procedure Code regulates the rights and obligations of the defendant. KUHAP also regulates evidence in the criminal trial process. Basically, the rights of a suspect or defendant are rights obtained during the investigation process or examination stage based on the provisions of Law Number 8 of 1981 or better known as the Criminal Procedure Code (KUHAP). The protection of the rights of the suspect or defendant is inseparable from the implementation of the principles in criminal law.

Some of the rights of suspects or defendants regulated in the Criminal Procedure Code can be described as follows; (Bambang Tri Bawono, 2011).

a. The right to priority of case settlement, Article 50;
b. Right of preparation, Article 51;
c. The right to receive legal assistance since detention, Article 54;
d. Right to contact.

Evidence regulated by the Criminal Procedure Code is one of them regarding witnesses. Witness testimony is one of the evidence used as a consideration by the judge in deciding a criminal offense. Regarding the right to submit witnesses or experts who have been given by the law by the suspect or defendant as referred to in Article 65 of the Criminal Procedure Code, so that the examiners at all levels of examination are obliged to ask the suspect or defendant, namely whether he will submit witnesses or expert witnesses who can provide information that is favorable to the defendant (Lamintang, P.A.F, and Theo Lamintang, 2010).

Legal Reasons the Defendant Did Not Present Witnesses A De Charge in the Trial of the Crime of Domestic Violence

A witness is a person who can provide information for the purpose of investigation, prosecution, and trial of a criminal case that he hears, sees, or experiences himself, or who has knowledge that is directly related to the occurrence of a criminal offense by mentioning the reason for his knowledge. Witnesses are one of the valid evidence in criminal cases, in the form of what the witness states in court. The presence of witnesses in court has important

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-*80*

legal reasons, namely to reveal the material truth of a criminal case, and to guarantee the rights of the parties involved in the judicial process. The presence of witnesses can also influence the judge's decision, because witness testimony can incriminate or relieve the defendant, or even acquit the defendant from the charges. The legal reasons for the presence of witnesses in court can be seen from several aspects, namely: (Ali Imron, 2019)

1 The juridical aspect, namely the presence of witnesses in the trial is based on the legal provisions that regulate it, both in the Criminal Procedure Code and in other related laws and regulations. For example, Article 160 paragraph (1) letter c of the Criminal Procedure Code stipulates that the presiding judge is obliged to hear witness testimony requested by the defendant, legal counsel, or public prosecutor during the trial or before a verdict is rendered. Article 184 paragraph (1) of KUHAP also stipulates that witness testimony is one of the valid evidences in criminal cases. In addition, Article 159 paragraph (2) of the Criminal Procedure Code also stipulates that being a witness in a criminal case is the obligation of every person.
2 The logical aspect, namely the presence of witnesses in court is based on reality or facts that occur, which can be proven by witness testimony. Witness testimony can help judges to know and understand the chronology, motive, mode, consequences, and other matters related to a criminal case. Witness testimony can also strengthen or weaken other evidence submitted by the parties, such as letters, instructions, expert testimony, or testimony of the defendant.
3 Ethical aspects, namely the presence of witnesses in court based on prevailing moral or ethical values, which require witnesses to provide honest, objective, and relevant testimony. Witnesses must respect the fairness of the judicial process, respect the rights of the defendant and the witness.
4 Psychological aspects, i.e. the presence of a witness in court is based on the psychological or emotional state experienced by the witness, which may affect his or her testimony. The presence of a witness may provide a sense of relief, satisfaction, or happiness for the witness, if their testimony can help reveal the truth, uphold justice, or resolve conflicts. However, the presence of a witness may also cause fear, anxiety, or sadness for the witness, if his or her testimony may pose a threat, danger, or harm to him or her or others.

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-80

Thus, the presence of witnesses in court has legal reasons derived from various aspects, namely juridical, logical, ethical, and psychological. These legal reasons indicate that witnesses have a vital role in the criminal justice process, which cannot be ignored or taken lightly (Munir Fuady, 2012). Therefore, witnesses must be respected, protected, and given their rights proportionally, in accordance with applicable legal provisions.

The legal basis for witnesses *a de charge* is Article 65 of the Criminal Procedure Code jo. Constitutional Court Decision 65/PUU-VIII/2010 and Article 116 paragraph (3) of the Criminal Procedure Code jo. Constitutional Court Decision 65/PUU-VIII/2010. A witness *a de charge* is a witness who is presented by the defendant to provide testimony that is favorable to him. Witnesses *a de charge* are different from incriminating witnesses, crown witnesses, and alibi witnesses. As in Decision No. 3339/Pid.Sus/2018/PN.Sby, the Defendant did not submit a mitigating witness (*a de charge*) and did not submit legal counsel during the trial. In the statement of the Defendant;

1 On Monday, April 02, 2018 at approximately 10:00 a.m. in room No. 3 on the fifth floor of Rusunawa Jambangan Surabaya Novi Erawati was hit by the defendant;
2 That it started when the defendant and Novi Erawati lived in Rusunawa Jambangan Surabaya and because they often argued, they separated and the defendant lived alone in the flat while Novi Erawati temporarily stayed at her parents' house;
3 That Novi Erawati came to the flat with the intention of taking Novi Erawati's belongings so Novi Erawati and the defendant got into an argument;
4 That when she was about to leave the flat, Novi Erawati took the key to the spare room so the defendant forbade Novi Erawati and told Novi Erawati to keep the key but Novi Erawati did not comply so the defendant became angry and kicked Novi Erawati in the stomach and then tried to grab the key from Novi Erawati's hand but Novi Erawati kept the key from her hand so they both tugged and pulled The defendant became angry and then the defendant bit Novi Erawati's hand so that Novi Erawati felt pain because the defendant's bite was very hard and finally Novi Erawati let go of the key that she was holding;
5 That after getting the key from Novi Erawati, the defendant then pulled Novi Erawati's headscarf which caused Novi Erawati to fall to the floor;

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-*80*

6 That the defendant and Novi Erawati were legally married on September 16, 2002 at the Office of Religious Affairs (KUA) in the presence of (Penghulu);

With the confession and the Defendant justifying all of his actions at the trial, for the consideration of the Surabaya District Court Judge;

1 Considering that all elements in the Primari charge have been fulfilled, it is declared that the Defendant is guilty of committing the crime as stated in the Primair charge.;
2 Considering that because the indictment is structured in Subsidiarity and the Primair indictment has been proven, it is not necessary to consider the other and remaining charges;
3 Considering, that during the trial, the Panel of Judges did not find anything that could erase the guilt of the Defendant, the Defendant was found guilty;

Based on the results of the author's interview with Dr. Rudi Suparmono, S.H., M.H. as an Associate Principal Supervisor at the Surabaya District Court, according to him, the witness A De Charge in this case that the testimony of the witness a de charge can help the defendant to prove himself that the defendant may not have committed the act charged by the Public Prosecutor (JPU) against the defendant. As with the existence of evidence which is everything that is related to an act, where with these tools of evidence, it can be used as evidentiary material in order to give rise to the judge's confidence in the truth of the existence of a criminal act committed by the defendant. The types of valid evidence are limitatively regulated in the provisions of Article 184 of the Criminal Procedure Code, namely five types of evidence, including:

1 Witness testimony
2 Expert testimony
3 Letter
4 Clues
5 Statement of the defendant

However, in this case, there is no obligation for the defendant to present witnesses at trial. This will not affect the legal status of the defendant, because the judge will still assess all available evidence. In accordance with Article 184 paragraph (1) of KUHAP, evidence in criminal cases includes: witness testimony, expert testimony, letters, instructions and testimony of the defendant. The judge has the right to convict the defendant without witness

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-80

evidence, as long as there are at least two other pieces of evidence and the judge's conviction. Therefore, the defendant does not need to worry if he does not have witnesses, as long as there is other evidence that can defend him.

In the Judge's decision, the Judge stated that the defendant had been proven legally and convincingly guilty of committing the crime of "committing acts of physical violence within the scope of the household" based on the primair charge as in Article 44 paragraph (1) of Law Number 23 Year 2004 on the Elimination of Domestic Violence; 2. Sentenced the Defendant to 6 (six) months imprisonment.

Conclusion

So based on Decision Number 3339/Pid.Sus/2018/PN.Sby related to the criminal case of domestic violence, there is also legal protection for the defendant regarding the rights that must be given to the defendant regardless of his guilt and actions. Based on Decision Number 3339/Pid.Sus/2018/PN.Sby, the Defendant Karyanto was charged by the Public Prosecutor with Subsidiary charges, namely Primair Article 44 paragraph (1) of Law Number 23 Year 2004 on the Elimination of Domestic Violence, Subsidiary Article 44 paragraph (4) of Law Number 23 Year 2004 on the Elimination of Domestic Violence. As long as he is still in the court process, Article 184 of the Criminal Procedure Code regulates the rights and obligations of the defendant. KUHAP also regulates evidence in the criminal trial process. Basically, the rights of a suspect or defendant are rights obtained during the investigation process or examination stage based on the provisions of Law Number 8 of 1981 or better known as the Criminal Procedure Code (KUHAP). In relation to the right to call witnesses or experts granted by the law to the suspect or defendant as referred to in Article 65 of the Criminal Procedure Code, the examiners at all levels of examination are obliged to ask the suspect or defendant whether he or she will call witnesses or expert witnesses who can provide testimony that is favorable to the defendant. There is no obligation for the defendant to present witnesses at the trial. This will not affect the legal status of the defendant, because the judge will still assess all available evidence. In accordance with Article 184 paragraph (1) of KUHAP, evidence in criminal cases includes witness testimony, expert testimony, letters, instructions and testimony of the defendant. The judge has the right to convict the defendant without witness evidence, as long as there are at least two other pieces of evidence and the judge's conviction. Therefore, the defendant does

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-*80*

not need to worry if he does not have witnesses, as long as there is other evidence that can defend him.

References

Bawono, Bambang Tri. "Tinjauan Yuridis Hak-Hak Tersangka Dalam Pemeriksaan Pendahuluan". Jurnal Hukum. Vol. XXVI, No. 2, Agustus 2011.

Chaimansyah, Eky. "Hak Tersangka/Terdakwa Untuk Mengajukan Saksi A De Charge (Saksi Meringankan) Dalam Proses Perkara Pidana". Lex Crimen Vol. V/No. 2/Feb/2016.

Prasetia, M. Edo Rezawan, Sandhi Permana, dan Yunita Kurnia Dewi. "Sistem Pembuktian Terbalik Dalam Pembuktian Perkara Gratifikasi". Jurnal Verstek Vol. 2 No. 2, 2014.

Samosir, Agustinus. "Pembuktian Terbalik: Suatu Kajian Teoretis Terhadap Tindak Pidana Korupsi". Jurnal Hukum Progresif: Volume XI/No.1/Juni 2017.

Elias Zadrack Leasa, "Kekuatan Keterangan Saksi Sebagai Alat Bukti Pada Perkara Kekerasan Dalam Rumah Tangga", Jurnal Belo 4, No. 2 (2019): 188-203, https://download.garuda.kemdikbud.go.id/article.php?article=1796681&val=18124&title=Kekuatan%20Keterangan%20Saksi%20Sebagai%20Alat%20Bukti%20Pada%20Perkara%20Kekerasan%20Dalam%20Rumah%20Tangga

Athaya Novita Andryanto Putri, "Visum Et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Kekerasan Dalam Rumah Tangga", Bureaucracy Journal 3, No. 2 (2023): 1433-1447, https://doi.org/10.53363/bureau.v3i2.257

Sisten Sri Ayu Ughude, "Kekuatan Alat Bukti Keterangan Saksi Korban Menurut Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga", Lex Et Societatis 4, No. 5 (2016): 33-42, https://doi.org/10.35796/les.v4i5.11950

Wikipedia, Kekerasan, 20 Februari 2022 pukul 12.47, https://id.wikipedia.org/wiki/Kekerasan., diakses pada hari senin, 20 Februari 2022, pukul 12.19 WIB.

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-80

Lamintang, P.A.F, dan Theo Lamintang. 2010. Pembahasan KUHAP (Menurut Ilmu Pengetahuan Hukum Pidana Dan Yurisprudensi). Jakarta: Sinar Grafika.

M. Yahya Harahap, Pembahasan Permasalahan dan Penerapan KUHAP (Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali), Jakarta: Sinar Grafika, 2010.

Satjipto Raharjo. 2009. Hukum Progresif: Sebuah Sintesa Hukum Indonesia. Genta Publishing.

Tolib Effendi, Dasar Dasar Hukum Acara Pidana (Perkembangan dan Pembaharuan di Indonesia) (Malang: Setara Press, 2014).

Zainuddin Ali, Metode Penelitian Hukum, (Jakarta : Sinar Grafika, 2013).

Undang – Undang Dasar Negara Republik Indonesia 1945;

Kitab Undang – Undang Hukum Pidana;

Kitab Undang – Undang Hukum Acara Pidana;

Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga;

Undang-Undang Nomor 31 Tahun 2014 tentang Lembaga Perlindungan Saksi dan Korban;

Undang – Undang nomor 39 Tahun 1999 tentang Hak Asasi Manusia.

Putusan Pengadilan Negeri Surabaya No. 3339/Pid.Sus/2018/PN.Sby.

Putusan Mahkamah Konstitusi 65/PUU-VIII/2010.

p-ISSN : 2407-8778
e-ISSN : 2580-0019
Volume 10, Issue 2, 2024, pp. 65-*80*

Acknowledgement

The authors would like to thank Universitas Merdeka Madiun for the funding and resources provided to conduct this research. Sincere gratitude also goes to anonymous reviewers and editors who have provided constructive feedback, which has enhanced the quality of this paper, making it worth reading and referencing.

Declarations

Author contribution	:	Author 1: Hikmah Istiqomah initiated the research ideas, instrument construction, data collection, analysis, and draft writing; Author 2: Waluyo revised the research ideas, literature review, data presentation and analysis, and the final draft.
Funding statement	:	This research was funded by the authors.
Conflict of interest	:	The authors declare no conflict of interest.
Additional information	:	No additional information is available for this paper.