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*The Evidentiary Power of Dementia Witnesses in Domestic Violence Cases*

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**ABSTRAK**

The Indonesian criminal justice system often neglects crime victims, relegating them to mere witnesses needed for case substantiation, a consequence of its bias towards perpetrator protection. This disregard extends to vulnerable victims like those with dementia, whose cognitive limitations significantly hinder their courtroom testimony, posing challenges in recalling events and expressing themselves clearly. Consequently, the credibility and evidentiary value of their statements are compromised, exacerbating the social and psychological impacts on dementia sufferers. This research aims to address this issue by examining the evidentiary power of dementia witnesses in domestic violence cases within the Indonesian legal framework, drawing on theories of legal protection and certainty. Employing a normative juridical approach, the study analyzes the role of the Public Prosecutor in the evidentiary process and proposes regulatory frameworks to ensure the fair treatment and protection of vulnerable individuals within the criminal justice system.

**Keywords: Criminal Law, Evidence of Law, Vulnerable Witnesses.**

**INTRODUCTION**

In the Book of Criminal Procedure Law, proofing is the most important session due to searching for material truth (Mueller et al., 2023). Judges must judge truth only with a minimum of two pieces of evidence plus evidence that the defendant is wrong and is breaching the criminal law.

Also, for the Crime of Domestic Violence, the prosecutor needs two pieces of evidence to bring the defendant to court. Here, the problem arises when the evidence is only the defendant and the victim itself as victim evidence, and the defendant does not confess his crime (Mueller et al., 2023).

Here, the only evidence could proceed as an eyewitness, but why if the eyewitness is not able to tell the real reality clearly and continuously due to his dementia?

Cerebral dysfunction commonly occurs in people over 60 years old, with symptoms such as memory decrease, way of thinking, problems with communication, and human relations that can affect the ability to socialize.

People living with Dementia in many countries, not only in Indonesia, neglect the basic rights and freedom they have as human beings; physical abuse occurs in old asylum or the family environment. Even busy family activities often deliver nursing to someone else or another family member so that dementia usually becomes a victim of domestic violence and even sexual embarrassment (Gerrard, 2019).

Due to the physical limitations of dementia, a violent victim lost the state's obligation to protect its citizens, which is a duty of the state because of the lack of legal norms in Indonesia (Alias et al., 2023). As an example, Law Number 31 of 2006 concerning witness and victim protection just set a few cases such as corruption, narcotics, and terrorism where the position of victim or eyewitness is in a dangerous position, and the victim or eyewitness in Domestic violence is ignored.

Law protection for victims of Domestic Violence is important because many parties that should protect dementia, on the other hand, took advantage of the bad purpose. For example, Yayasan Tuna Bangsa Asylum in Pekanbaru uses dementia patients as a beggar.

The person living with Dementia of criminal abuse doesn't understand how to make a report to the police, and on the other hand, the family hesitates on the ability of dementia to completely explain clearly the criminal abuse happened.

Not often, the family of people living with dementia reporting to the police found a problem in communication between police and dementia victimized due to minimum ability. The family of Victim Dementia Sufferers must realize that Procedural Law needs evidence, one of which is the testimony of victim eyewitnesses to prove the criminal abuse (Åker, 2021).

The testimony of the Victim's Dementia sufferer is different from that of the commonly healthy eyewitness who can explain the criminal act clearly (Baddeley et al., 2023). On the other hand, the testimony of people living with dementia tends to be unsynchronized and gives rise to confusion. In this situation, the judges and prosecutors must be more careful and punctual when considering the case.

In Criminal court, the testimony of Victim Demensia is not a problem if there is the testimony of another eyewitness who supports the testimony of Victim Demensia (Murphy & Rissman, 2020). But what happens if there is only one eyewitness with Dementia as a victim of Sexual Abuse in a case of violence in domestic violence? Where in Law Number 23, the year 2004 of Eradication of Domestic Violence, article 55 explains that "as a valid piece of evidence the testimony of a one victim eyewitness is enough to prove that defendant guilty if accompanied by other valid evidence." In explanation of article 55 explains that the testimony of one victim eyewitness is enough if accompanied by the confession of the defendant. The problem arises if the defendant denied his criminal act and the eyewitness, as a dementia sufferer, cannot explain completely the sexual abuse that happened to her.

Domestic violence, as defined by Law Number 23 of 2004, encompasses various forms, including physical abuse, which involves actions causing pain or injury; psychological violence, characterized by behaviors inducing fear or undermining mental well-being; sexual abuse, which entails coercing someone into sexual activities within the household; and household neglect, where responsibilities towards household members are neglected.

As a Law state, Indonesia must protect the citizen's rights, including the rights of people living with dementia as a victim of domestic violence. Still, as a matter of fact, this is not yet offered in the rule of law.

In England, to solve the problem of conflict of human interest, the government published Law The Lost Leg of The Youth Justice Criminal Evidence Act that arranges special adjustments on the trial formality SESSION for people prone to or intimidated in session without swearing. In Indonesia, that regulation has not yet been published, so there is a legal vacuum for people living with dementia as victims and eyewitnesses in the court.

The study titled "The Strength of Evidence of Witness Sufferer Dementia in Cases of Domestic Violence" aims to investigate two key questions. Firstly, it seeks to assess the strength of evidence presented by witnesses suffering from dementia in cases of domestic violence. Secondly, it aims to examine the role of the Public Prosecutor in the evidentiary process when handling cases involving witnesses with dementia, with the goal of devising optimal protocols and regulations to safeguard the rights of individuals living with dementia as vulnerable parties in legal proceedings.

## RESEARCH METHODS

Legal research is a thorough and careful rediscovery of legal materials or legal data to solve legal problem (Lasswell & McDougal, 2023) s. The Types of research include Normative legal research, which is legal research that examines from an internal perspective with the object of research being legal norms, and Juridical legal research, which is legal research that examines from the perspective of concepts, theories, legal principles and statutory regulations related to research. Normative legal research, according to Marzuki & Sh, is:

“Normative legal research is a process of discovering legal rules, legal principles, and legal doctrines to answer the legal issues faced.”

In carrying out the approach to problems related to this research topic, the following research methods were used.

### Type of Research

#### 1. Type and Research Approach

Legal research is the rediscovery of legal data to solve legal problems. Depending on the type, legal research consists of Normative Legal Research, which studies from an internal perspective with the objective of establishing legal norms, and Yuridis Legal Research, which studies perspective concepts, theories, principles, and statutes of law.

The writer chose The YuridisNormatif research as a type of Yuridis research about implementing normative law directly to legal events that occur in society (Fitriana et al., 2022).

According to Marzuki & Sh, normative legal research is a process of finding the rule of law, principles of law, and doctrines to solve a legal issue. Because this study takes the Yuridis normative approach, the writer analyses the method of combining legal materials.

#### 2. Types and Sources of Legal Materials;

The source of Legal Materials consists of :

- a. Primary legal materials are prime legal materials that consist of regulations, and official documents contain regulations.

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The source of primary legal materials is Indonesia Constitutional Law Year 1945, Law Number 8 the year 1981 concerning the PROCEDURAL Law Book, Law Number 23 the year 2004, concerning Elimination of Domestic Violence, Law Number 12 the year 2022 concerning Criminal Act of Sexual Violence, Law number 31 year 2014 concerning Protection of Witness and Victims, Law Number 48 year 2009 concerning Judicial Power, Law Number 18 year 2014 concerning: Mental Health, Law number 1 year 2023 concerning Criminal Law.

- b. The source of secondary legal materials is a document explaining basic legal materials, such as books, articles, journals, etc., concerning the problem discussed.
  - c. Source of Legal Materials such as dictionaries, encyclopedias, writing on mass media, etc.
3. Collecting Legal Materials Techniques could be done by Legal Studies and Library Studies that are relevant to the subject research ;
  4. Analyses of Legal Material.

## **RESULTS AND DISCUSSION**

### **The Strength of Evidence of The Dementia Witness on The Crime of Domestic Violence.**

A person living with Dementia as a witness of crime often neglects their right to justice. In court, persons living with Dementia are classified as prone to witness (Liljegren et al., 2018). Dementia happens to people over 65 years old when memory and way of thinking decrease, but it is not classified as a mental disorder but as an aging process. Although person living with dementia has lost their ability to tell their life, they can tell their experience in irregular words. A witness can give their testimony, but it is difficult to know in detail and orderly, confused, and difficult to express so that it will influence the credibility of the strength of evidence for sufferer dementia and the social and psychological impact on the person living with dementia as a criminal victim.

Giving testimony in court session could be a terrible experience for a person living with dementia, and the psychological impacts may be:

1. Anxiety and Stress:

Anxiety and stress may arise when they are asked by judicial officers such as judges, prosecutors, and attorneys because of tension in remembering and communicating information about the criminal act.

2. Panics and Confused:

Giving testimony in court can trigger panic and confusion in a person living with dementia due to difficulties of adaption in crowd attendants in the court.

3. Self-evidence decrease.

Difficulties in memory for telling criminal acts and communicating information appropriately cause inferiority and frustration for people living with dementia.

4. Long Term Impact

Repetitive Stress may happen for a person living with dementia after remembering a criminal act in a court session.

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It is very important for the Indonesian Judicial system to ensure that dementia sufferers are treated more carefully, to give them the right protection before and after court sessions, such as asking kindly and easily, and to simplify procedural law for them.

The social impact happens to people living with dementia after giving testimony in court ;

1. Social Isolation

After giving testimony in court, a person living with dementia experiences social isolation, such as feeling clumsy and uncomfortable in interaction due to the tension experienced in court.

2. Social Support Decrease

After giving testimony, a person living with dementia often receives social support from friends, family, and community members because of ignorance to support dementia sufferer witnesses.

3. Stigma and Discrimination

After the judicial process, the person living with dementia witness usually gets the negative stigma of dementia and treats the witness with a disdainful look.

4. Uncertain Social Relations

After giving testimony, people living with dementia experience insecurity in social relationships, where they are not sure about how others respond or treat them after the testimony.

To protect the person living with dementia from the negative social impact, it is necessary to provide social support, appropriately include support from family, provide accompaniment or counseling, and increase understanding of society's attitude toward dementia.

In Indonesia's criminal justice system, there is no attention paid to the witness as a victim because it is used to prove the criminal act it self (Masrurah et al., 2022). It occurs because the criminal justice system is oriented toward the protection of criminal defendants so that witnesses do not yet have professional attention.

In order to grow, people's role in revealing criminal acts needs to be conducive to a situation that gives law protection and security to anyone who knows or finds anything that can reveal the criminal act. The witnesses, including the dementia sufferer victim, must be protected physically and psychologically (Craftman et al., 2020).

In Malawi, judges bear responsibility for protecting prone witnesses who face aggressive defendatadvokation so that witnesses are allowed to give testimonies on video record and in a separate room or with the help of an intermediary.

In England, there is The Lost Leg of The Youth Justice and Criminal Evidence Act, Special Measures and Humane Treatment, which changes the conventional method of special treatment in criminal court so that witnesses can give testimonies unnoticed or outside the session room via live streaming or with the help of a communication specialist or communication device.

In special treatment, judges, prosecutors, and advocates are required to remove their toga while the witnesses testify.

In the Lost Leg of The Youth Justice and Criminal Evidence Act, vulnerable witnesses are children under 18 or adults who have physical/mental disorders prone to intimidation. Special action in law showed that special assessment is important for special action.

The obstacle to solving a criminal case occurs when the trial must be proven in oral testimony under oath in court session. This is difficult for a person living with dementia, especially for sexual harassment victims (Bows, 2018).

In Indonesia, the strength of evidence of a single witness needs consideration:

1. Validity of testimony ;

Although the testimony of people living with dementia may be difficult to explain clearly in the chronology of the criminal act, the testimony is still valid if they can give relevant important things to the case. The court will consider witnesses, including people living with dementia when assessing the strong evidence for the judge's decision.

2. Other evidence support

In domestic violence cases, physics evidence, police reports, other evidence, and video/audio records can become additional factors for supporting the strength of the evidence out of the single dementia sufferer witness (Grenfell et al., 2021). The evidence can help strengthen cases and compensate for the limitation of the dementia sufferer witness.

3. Expert information.

Medical or Psychological experts can help the judges evaluate the ability of witnesses suffering from dementia to give accurate information (RAVVEN & ZONANA, 2017). The expert can provide information about mental and cognitive health and the ability to give testimony.

Referring to the 4 points above, the Court can evaluate each case individually by considering relevant factors, including The Strength of evidence for a single witness for making a justice-court decision. However, the testimony of a person living with dementia is not always considered proper proof, especially if there is doubt about the validity and credibility of the witness (Spencer, 2023). So, in that case, testimony is only viewed as direction for forming a complaint of criminal happens. **The prosecutor's role in the proof process when the person living with dementia was faced in our session in order to create ideal regulations for a person living with dementia as a vulnerable party.**

Justice officers like judges, solicitors, and prosecutor must take their part to ensure the person living with dementia is treated fairly and rightly in court (Sinclair et al., 2021). Here are the examples of participation and the parties in court process involving dementia sufferer witnesses:

1. The judge's role is to supervise all court processes and ensure that each party's rights are respected. The judge instructs the solicitor and witnesses to ask politely and clearly so the dementia sufferer witness can comfortably give testimony based on the evidence (O'Reilly & Shatz, 2019).
2. The prosecutor's role is to avoid asking and using interrogation." Stechniq could embarrass or mislead a witness. The prosecutor is responsible for presenting cases properly and objectively without influencing the credibility of the dementia sufferer's witness (Sawich & Casiano, 2021).

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The prosecutor ensures that the dementia sufferer's witness gives enough opportunity for testimony without pressure and influence from the opposite.

3. The solicitor and prosecutor prepare questions properly for the person living with dementia witness, especially the questions that do not raise confusion so the person living with dementia witnesses not being stressed and treated properly and does not neglect their rights, interrupted in not relevant and inappropriate treatment to dementia sufferer witness.

Besides, all parties must have legal professionalism and responsibility for treating the witness honorably and fairly regardless of the witness's condition so that judges can consider the evidence balanced and fairly.

Besides, legal officers' role in legal psychology, as a discipline of science on human behavior, can provide science and psychological intervention in court sessions.

Role of judicial psychology in court session :

1. As an advisor. Psychology, as a judge advisor or solicitor in session, can advise on witness ability in court.
2. Strengthen law enforcement. For example, the role of psychology is to explain the psychological condition of dementia sufferer witnesses so that they can make proper decisions for the judicial officers.

The judicial process in Indonesia has not yet involved psychology, whether the role of judicial psychology is very important for describing the personality of the defendant and victim completely (Butt, 2021). Lloyd Bostock, in the *British Journal of Psychology*, volume 79, edition 1988, expressed that there are fields of law that have studied and intervened in psychology where the witness is very important for the court process.

Testimony can be tested for its reliability; memory concept can test the right or wrong of testimony or because of judge/prosecutor intervention, solicitor or third-party intervention.

Verdict or judge's decision is not free from the psychological concept because the verdict is not only based on formal law but also with confidence.

Ron Fisher and Edward Geiselman, in 1992, created the hypnotical techniqkognitif interview, which aims to retrieval process or to get back memory by conditioning victim witness to feel relaxed and cooperative so that the emotionally shy and tends to lose memory can reemerge the memory.

The regulation for dementia sufferers must contain protection for the person living with dementia in court so that they can testify comfortably and without pressure.

Protection for person living with Dementia in court :

1. The judge can refuse irrelevant questions, demeaning or inappropriate questions.
2. Provide aid or assistance during court sessions. The assistance can help witnesses understand questions and give emotional support during court sessions.
3. Using technology and simplification procedures to facilitate dementia, such as Zoom, video, or audio, or simplification of language, can help dementia patients easily understand.

4. Authority of judge for special needs for dementia, such as giving more time, arranging court calendar, and allowing witness statements in writing.
5. Protection against intimidation, threat, or retaliation in court, including access restriction for third parties involved and physical protection.

In various countries, there is special training or guidance for legal officers to handle cases involving dementia sufferers or witnesses with health problems. This training aims to help the legal officers better understand how dementia can influence testimony.

The special training usually covers various special topics as follows :

1. Understanding dementia covers the basics of dementia and how that matter could influence testimony or the ability to give testimony.
2. Communication skills for legal officers include how to ask clearly and effectively and to listen patiently.
3. Legal officers have skill testimony evaluation, which could understand between imaginary memories and real memories.

In Indonesia, such special training does not yet exist, so it is a challenge in the future to create a special training that involves collaboration between legal officers and the Indonesian Doctor Association or Association of Mental Medicine Specialists.

Law Protection for mental limitation victims, include dementia, covered by regulations such as :

1. Law Number 31 year, 2014, concerning Protection for witnesses and victims. In general, arrange steps to protect the witness and victim but not arrange for the witness or sufferer dementia victim.
2. Law Number 8 of 2016 concerning Disabilities Sufferers. It only arranges for the protection and guarantee of rights for disabilities but is not especially focused on crime victims.
3. Criminal Procedural Law does not arrange protection for crime victims directly, including mental limitation victims.

## CONCLUSION

Dementia, distinct from a mental disorder, manifests as a natural part of aging. Its impact on testimony can diminish credibility and the strength of evidence. While criminal court procedures prioritize defendant protection, they often overlook victim protection. Enhancing civil society's role in uncovering criminal activity necessitates safeguarding individuals who witness and report crimes. In cases involving domestic violence, supplementary evidence such as physical notes, police reports, and testimony from other witnesses can bolster legal proceedings, mitigating reliance on the testimony of individuals living with dementia to ensure a fair verdict.

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