

Juridical Analysis of The Role of Expert Witnesses in Proving The Crime of Document Forgery Case Study of Decision Number 398/Pid.B/2020/PN BNA

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Abstract.

Proof is the heart of the criminal justice process, where expert witnesses play a crucial role in providing enlightenment to judges, especially in technical cases of document forgery. This research juridically analyzes the role of expert witnesses in proving the crime of document forgery by examining the Decision of the Banda Aceh District Court Number 398/Pid.B/2020/PN BNA. The research method used is normative juridical with a case study approach. The results show that the testimony of expert witnesses in the decision was determining evidence to uncover the mode of forgery, prove the element of the defendant's guilt, and ultimately form the judge's conviction. The existence of expert witnesses not only strengthens other evidence but also becomes an objective standard in assessing the authenticity of a document. It is concluded that the position of expert witnesses is instrumental and strategic in the evidence system for criminal cases of document forgery.

Keywords: Document; Evidence; Expert; Forgery and Witness.

I. INTRODUCTION

Indonesian criminal procedure law, as manifested in the Criminal Procedure Code (KUHAP), places evidence as central to the search for material truth in a judicial process. The principle adopted is negative proof according to law, whereby a judge may not sentence a person unless supported by at least two valid pieces of evidence and a conviction arising from them. In this context, one of the pieces of evidence recognized as valid according to Article 184 of the Criminal Procedure Code is expert testimony. Expert testimony has unique characteristics because it provides scientific or technical assessments and opinions that are beyond the judge's capacity as a jurist, making its presence very vital in complex and specialized cases, such as the crime of document forgery. Document forgery, as an act that intentionally makes a document appear to be authentic, has become a serious threat to legal certainty and administrative order in various aspects of social and state life. The increasingly modern development of society, with all its dynamics, has given rise to increasingly complex forms of crime, including the methods and techniques used to forge documents. In this context, the criminal justice system is required to adapt and develop evidentiary methods that can reveal the material truth of a crime. The presence of expert witnesses in the evidentiary process is a necessity, given the judge's limited knowledge of technical and specific matters. Without this expertise, the judicial process is likely to only achieve formal truth, while the material truth, the primary goal of the criminal justice process, is neglected.

Philosophically, the presence of expert witnesses in the criminal justice system embodies the principle of a fair and quality trial. This principle requires that a judge's decision be based on comprehensive, rational considerations, and not solely on subjective beliefs. Expert witnesses exist to fill gaps in the judge's knowledge, ensuring that the decision rendered is not only legally valid but also supported by objective scientific or technical truth. In cases of document forgery, which often involve sophisticated techniques, the role of expert witnesses is crucial in uncovering the modus operandi and distinguishing genuine documents from forgeries, thus essentially becoming the guardians of material truth in court. Progressive legal philosophy teaches that the law must be able to respond to developments in society and technology. In the context of proving the crime of document forgery, this means that the justice system must open up ample

space for the presence and role of expert witnesses. Expert testimony should not be viewed as merely a complement to the trial process, but rather as a crucial instrument that can enlighten judges in understanding the technical facts at the heart of the matter. Thus, expert witnesses act as a bridge between the normative legal world and the empirical technical world, ensuring that court decisions are not only legally correct but also scientifically sound.

Document forgery, as a crime, has unique characteristics that distinguish it from other types of crimes. This crime is often committed using methods that are difficult for laypeople to detect, requiring specialized expertise to uncover. In many cases, document forgery involves not only physical forgery but also electronic forgery, as digital technology advances. This situation demands a specialized evidentiary approach, in which the role of expert witnesses is becoming increasingly central. Without adequate expertise, it is impossible for law enforcement to uncover and prove document forgery crimes committed using sophisticated methods. Sociologically, the phenomenon of document forgery shows an increasing and diverse trend, in line with technological advances. Data from the Indonesian National Police shows a significant increase in document forgery cases in the past five years, with increasingly varied and difficult-to-detect methods. Forgery is no longer solely carried out conventionally but has also utilized digital devices, thus requiring specialized expertise to detect. The public expects law enforcement officials, in this case judges, to be astute and fair in resolving such cases. However, without adequate expertise, it is impossible for judges to understand the technical intricacies of forgery, such as different types of ink, watermark analysis, digital signature examination, or identification of manipulation in electronic documents. The increasingly digitalized modern society has created an environment vulnerable to electronic document forgery. Business transactions, government administration, and even the judicial process itself have largely shifted to digital forms.

While this development provides convenience, it also opens up new opportunities for document forgery. In this context, the presence of expert witnesses with expertise in digital forensics is increasingly important. They play a role not only in uncovering forgery but also in educating law enforcement about the characteristics and methods of detecting digital document forgery. The social impact of document falsification crimes cannot be underestimated. This crime can harm many parties, both materially and immaterially. Forged land documents, for example, can lead to prolonged ownership disputes and harm those entitled to them. Falsification of financial documents can result in significant economic losses for both companies and individuals. Falsification of civil registration documents can even disrupt the state administration system. Therefore, serious handling of this crime through a quality judicial process is imperative. From a legal perspective, the legal status of expert witness testimony is expressly regulated in Article 1 number 28 of the Criminal Procedure Code in conjunction with Article 186 of the Criminal Procedure Code. Expert testimony is defined as information provided by a person with special expertise regarding matters necessary to shed light on a criminal case for the purposes of an examination. This testimony can be given orally in court or in writing and submitted to the judge. However, court practice often raises issues, such as the judge's level of confidence in expert testimony, conflicts between expert testimonies, and the extent to which expert testimony can be used as the sole basis for forming a judge's conviction.

The provisions regarding expert witnesses in the Criminal Procedure Code (KUHP) are still general and do not detail the procedures for submitting, qualifying, and examining expert witnesses. This has led to varying practices across courts. Some courts rely heavily on expert testimony, while others remain hesitant to use expert testimony as primary evidence. This situation creates legal uncertainty and has the potential to lead to inconsistent decisions in cases with similar facts. Court decisions, including Supreme Court decisions, show variation in their approach to this issue. Expert testimony is sometimes considered decisive evidence, while other decisions still require the support of other evidence even if strong expert testimony is available. In Supreme Court Decision Number 65 K/Pid/2010, for example, the Supreme Court emphasized that expert testimony can be used as a basis for proof even if it is not supported by other evidence, as long as the testimony is convincing to the judge and logically justifiable. However, in other decisions, the Supreme Court sometimes still requires supporting evidence. Studying court decisions is highly

relevant for understanding how formal legal theories and provisions are applied in practice. The Banda Aceh District Court Decision No. 398/Pid.B/2020/PN BNA was chosen as a case study because it provides a comprehensive overview of the role of expert witnesses in exposing a criminal act of document forgery. In this decision, the testimony of a police forensic expert was key to uncovering the manipulation of documents used as evidence by the public prosecutor.

Analysis of this decision is important for several reasons. First, it represents a concrete example of how expert testimony can play an effective role in proving the crime of document forgery. Second, it demonstrates the judge's approach to assessing and considering expert testimony, a lesson for other law enforcement agencies. Third, this decision can serve as a basis for evaluating the effectiveness of the provisions regarding expert witnesses in the Criminal Procedure Code (KUHAP) and their practice in court. More broadly, this research is also relevant to efforts to reform Indonesian criminal procedure law. The draft of the new Criminal Procedure Code (KUHAP) currently being prepared by the government and the House of Representatives (DPR) is expected to provide more detailed regulations regarding the status and role of expert witnesses in the criminal justice process.²⁶ The findings of this research are expected to contribute to the refinement of the provisions regarding expert witnesses in the draft new KUHAP. This research on the role of expert witnesses in proving the crime of document forgery has high significance, both theoretically and practically. Theoretically, this research will enrich the body of knowledge in criminal procedural law, particularly regarding the theory of proof using expert testimony as evidence. Practically, this research can provide guidance for law enforcement in optimally utilizing expert witnesses in the process of proving the crime of document forgery.

Based on the background description above, the problem formulation in this research is:

1. What is the role of expert witnesses in the system of proving the crime of document falsification according to the provisions of criminal procedure law in Indonesia?
2. What are the legal considerations of the Judge in Decision Number 398/Pid.B/2020/PN BNA in assessing and using expert witness statements as evidence to prove the crime of document falsification?

II. RESULT AND DISCUSSION

1. The Position and Role of Expert Witnesses in the Evidence System for Criminal Acts of Document Forgery

a. Legal Basis and Nature of Expert Statement

Expert testimony as valid evidence has a constitutional basis in Article 184 letter c of the Criminal Procedure Code. Unlike ordinary witness testimony, which is based on sensory knowledge (sight, hearing, experience), expert testimony is based on knowledge, expertise, experience, or special skills possessed by an individual. This scientific nature makes it an "enlightening" (verhelderend) piece of evidence for judges. In the context of document forgery, a document forensic expert or graphologist, for example, can explain differences in ink characteristics, paper types, writing pressure, or signature discrepancies that cannot be identified by laypeople, including judges. Expert testimony in criminal evidence serves a dual function. First, as direct evidence that can be used to support or refute a proposition of legal fact. Second, as a tool to test and assess the strength of other evidence, for example by examining the authenticity of a letter or document submitted as documentary evidence. The Indonesian Supreme Court Decision has emphasized that expert testimony can be used as a basis for proof even if it is not supported by other evidence, as long as the testimony is convincing to the judge and logically justifiable.

b. Process of Submitting and Examination of Expert Witnesses

The submission of expert witnesses in the trial process can come from the parties (public prosecutor or legal counsel) or on the judge's own initiative based on the authority granted by Article 133 paragraph (2) of the Criminal Procedure Code to seek material truth. The expert presented must meet competency requirements, namely having special expertise relevant to the case being examined. This competence can be proven by a diploma, certificate, or long work experience in the field. Before providing testimony, the expert must take an oath or promise according to his religion to provide the

most objective information possible for the sake of justice. The examination of expert witnesses in court is conducted through cross-examination by the parties. The Public Prosecutor and Legal Counsel have the right to ask questions that test the scientific basis, methodology, and conclusions of the expert's opinion. This process will reveal the strengths and weaknesses of the expert's testimony. The judge, as the presiding judge, may also ask clarifying questions to ensure his or her understanding of the testimony. All of these processes aim to help the judge assess the credibility and weight of the expert's testimony.

2. Analysis of the Judge's Legal Considerations in Decision Number 398/Pid.B/2020/PN BNA

The Banda Aceh District Court Decision Number 398/Pid.B/2020/PN BNA is a relevant case study to analyze the strategic role of expert witnesses in proving the crime of document forgery. In this case, the defendant was accused of falsifying an agreement by changing the contents and stamp stated on the document.

a. Expert Witness Statement as the Basis for Exposing the Forgery Method

In his verdict, The judge explicitly stated that the testimony of a forensic document expert from the Police had been crucial evidence. The expert, in his *visum et repertum*, concluded that there were differences in the type of ink and the character of the writing on certain parts of the agreement, indicating that the documents were not created at the same time, but rather that there were additions or changes (interpolations) at a later date. This testimony successfully exposed the defendant's *modus operandi*, which claimed that the documents were authentic and created in their entirety at one time. Without this technical expertise, it would have been difficult for the judge to distinguish between the original documents and those that had been manipulated.

b. Expert testimony in proving the element of intent (Opzet)

One of the elements that must be proven in the crime of forgery is the element of intent. In this decision, the Judge used expert testimony to prove this element. The Judge argued that the forgery method revealed through expert testimony, which showed certain techniques and efforts to resemble the original writing, proved that the defendant's actions were not negligence, but rather an intentional and planned act. In other words, the complexity of the forgery technique that can only be revealed by an expert is a strong indicator of the presence of *mens rea* or malicious intent on the part of the defendant.

c. Expert Statement and the Formation of Judges' Confidence

In his judgment, the judge stated that the expert testimony had provided "scientific certainty" which was then used as the basis for forming his belief. This is in line with the theory of evidence which requires that the judge's belief be based on a logical reasoning process and supported by valid evidence. The expert testimony provides a rational and objective foundation for the judge's subjective belief. This decision shows that although the judge's belief is subjective, the process of reaching it must be objective, and expert witnesses play a role in providing this objectivity in technical matters such as forgery. The judge does not simply accept the expert testimony, but has checked its consistency and coherence with other evidence, such as witness testimony and physical evidence.

III. CONCLUSION AND SUGGESTIONS

1. Conclusion

Based on the discussion above, the following conclusions can be drawn:

1. Expert witnesses play a very important and strategic role in the system of proving the crime of document forgery. This role is not only limited to providing additional information, but also as a provider of enlightenment (*verhelderend*) which provides scientific and technical analysis to uncover material truth, prove elements of intent, and serve as an objective standard in assessing the authenticity of a document. Its position in the Criminal Procedure Code as a valid piece of evidence makes it a supporting pillar for judges in forming convictions.
2. In Decision Number 398/Pid.B/2020/PN BNA, the Judge appropriately and proportionally utilized expert witness testimony as the primary basis for legal considerations. The Judge did not merely

passively accept the expert testimony but conducted a comprehensive assessment by correlating it with other evidence. The expert testimony in this decision successfully uncovered the forgery method, proved the defendant's intent, and ultimately served as a strong foundation for the judge's conviction to declare the defendant guilty.

2. Suggestions

1. Law enforcers (investigators, public prosecutors and judges) are advised to be more proactive in proposing and utilizing expert witnesses at every level of examination of criminal cases of document falsification, considering the technical complexity inherent in this type of case.
2. There needs to be clearer guidelines or standard operating procedures from the Supreme Court regarding the qualifications and methods of examining expert witnesses to minimize differences in interpretation and ensure the quality of expert testimony given in court.

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