



Trapping Witnesses Who Give False Testimony Study of the Criminal Code and Qanun Law

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Abstract

Witnesses who testify in court are required to speak the truth; however, there are also instances where witnesses provide false testimony. The challenges of implementing Articles 291 and 373 of the current Indonesian Criminal Code (KUHP) and Article 170 of the Aceh Qanun in prosecuting witnesses who give false testimony are important to examine and analyze. This research uses a normative method with legislative, historical, conceptual, and futuristic approaches. The analytical techniques employed in this study are descriptive and prescriptive. Legal materials are analyzed by evaluating the collected data. The interpretation methods used are systematic and grammatical. The findings of this study show that the primary objective of Articles 291 and 373 of the current Indonesian Criminal Code and Article 170 of the Aceh Qanun is to ensure that witnesses provide truthful testimony in court based on what they have seen, experienced, or heard, whether directly or indirectly. However, challenges also arise in prosecuting witnesses who give false testimony. There is potential for multiple interpretations because neither Articles 291 and 373 of the Criminal Code nor Article 170 of the Aceh Qanun specify how many times a witness must give false testimony before these articles can be applied, or whether a single instance of false testimony is sufficient for the application of these articles. This creates the potential for judges to apply these articles subjectively. Therefore, future legislation by the government and lawmakers must establish clear benchmarks for determining when a witness has provided false testimony.

Keywords: *Witnesses; Give False Testimony; the Criminal Code; Qanun Law.*

Introduction

Your text is here, in 12-pt Calibri font, left, right, top, and bottom margins are 3 cm on A4-sized paper; 1.5 line-spacing; don't add space before and/or after paragraph; length: between 5,000 and 8,000 words (including abstract, references, and footnotes). It is much better to not format your text in a specific technique, instead, just leave it plain except that you really need to type certain words in a "special method", or to emphasize certain word or words. Italic is a must in typing non-English word. Arabic word is transliterated based on Arabic-Indonesian transliteration according to SKB 3 Ministers style (Riyadi, Fauzan, & Budiman, 2023).

An introduction of the paper (with a proportion of 15-20% of the whole article length) should clearly state the purpose of the paper. It includes background of the problem, state of the art at least 5 articles sourced from reputable international journals or accredited journals for a maximum of the last 10 years, gap analysis with previous research, novelty, research objectives are clearly presented (expressed). All introductions should be presented in the form of paragraphs, not pointers (Ferrazzani, 2023).

Witnesses play a crucial role in criminal trials, where their testimony and cross-examination are essential in presenting the relevant facts of a case to the judge. (Wang & Caruso, 2016) Witness testimony holds significant weight in court proceedings, as it can provide elements that prove the facts of a case, especially when witnesses were present during the commission of a crime. (Sønneland, 2021) In many instances, witness testimonies are valued for their ability to establish whether specific legal violations were committed, shedding light on the guilt or innocence of the accused. (Sønneland, 2021) The testimony of witnesses is often considered the most critical component of a trial, forming a substantial part of the evidential basis for court decisions. (Boccaccini, 2002) Moreover, witnesses are required to provide information directly related to what they have seen, heard, or experienced in a case, emphasizing the importance of firsthand knowledge and indirect in their testimonies. (Nofiardi, 2023)

The role of witnesses extends beyond providing testimony in criminal trials; it also involves ensuring justice and protecting the integrity of the legal process. Witness protection measures are implemented to prevent false testimonies and maintain the credibility of court proceedings. (Mansyah, 2023) In cases involving witnesses with intellectual disabilities, the capacity of these individuals to testify in court is assessed to determine their suitability as witnesses, highlighting the importance of accommodating diverse witness populations in the legal system. (Gudjónsson et al., 2000) Moreover, the intersection of testimony styles in judicial proceedings underscores the need to understand and adapt to different communication styles to enhance the effectiveness of witness testimonies in court. (Berk-Seligson, 1987)

Witnesses are indeed a fundamental part of criminal trials, providing essential testimony that contributes significantly to the presentation of facts in court. (Boccaccini, 2002) The information presented in court largely stems from witnesses' testimonies, including litigants, victims, and eyewitnesses, which play a crucial role in establishing the facts of a case. (Boccaccini, 2002) Witness testimonies are valued for their ability to prove specific legal violations and offer insights into the guilt or innocence of the accused. (Sønneland, 2021) In criminal trials, the

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testimony and cross-examination of witnesses are relied upon to furnish judges and juries with the relevant facts necessary for making informed decisions. (Wang & Caruso, 2016)

Witnesses in criminal trials can encounter various legal challenges that may impact their testimonies and the overall outcome of the trial. One significant issue witnesses may face is witness intimidation or coercion, where individuals are pressured or threatened to alter their testimonies or refrain from testifying altogether. Witness intimidation poses a serious threat to the integrity of the legal process, as it can lead to the suppression of crucial evidence and hinder the pursuit of justice. In cases of witness intimidation, legal measures such as witness protection programs and confidentiality protocols are essential to safeguard witnesses and ensure their willingness to testify without fear of reprisal.

Moreover, witnesses may also encounter challenges related to memory accuracy and reliability, especially in cases where significant time has passed since the events they are testifying about occurred. Memory distortion, false memories, and suggestibility can affect the accuracy of witness testimonies, potentially leading to wrongful convictions or acquittals. Legal professionals must be aware of these memory-related challenges and take appropriate measures to assess the reliability of witness testimonies in criminal trials.

Another legal issue witnesses may face is the phenomenon of witness tampering, where individuals attempt to influence or manipulate witnesses to change their testimonies or withhold information from the court. Witness tampering undermines the fairness of the legal process and can result in the obstruction of justice. Legal frameworks that prohibit witness tampering and impose penalties on those found guilty of such actions are crucial in upholding the integrity of criminal trials and protecting the rights of witnesses.

Furthermore, witnesses with vulnerabilities, such as children, individuals with disabilities, or victims of trauma, may encounter legal challenges related to their ability to provide coherent and reliable testimonies in court. Special accommodations, such as allowing support persons or utilizing alternative communication methods, may be necessary to facilitate the participation of vulnerable witnesses in legal proceedings. Legal professionals must be sensitive to the unique needs of vulnerable witnesses and ensure that their testimonies are obtained in a manner that upholds their rights and promotes fair trial practices. witnesses who give false statements at trial will of course harm one of the parties, including the public prosecutor, the judge and the defendant. or vice versa. to ensnare witnesses who give false statements at trial are Article 291 of the Criminal Code and Article 373 of the Criminal Code. the threat of imprisonment of up to 7 years. However, this article has obstacles in its implementation. one example is when confirming a witness's statement by comparing it with the statements of other witnesses. sometimes contradictory. Therefore, it is important to study and analyze Article 291 of the Criminal Code and Article 373 of the Criminal Code both contextually and contextually.

In the context of Aceh's Qanun Law, false testimony is generally regulated under Article 170 of the Aceh Qanun on Jinayah (Islamic criminal law). False testimony refers to statements given by a person in court that are not truthful, whether intentionally or unintentionally. Providing false testimony in legal proceedings is considered a violation of the law and can

undermine justice in resolving cases. Article 170 of the Aceh Jinayah Qanun specifically addresses sanctions for witnesses who provide false testimony. This article stipulates that individuals who give false testimony in court may be subject to “ta'zir” punishment, which is a discretionary penalty determined by the judge in accordance with Islamic principles applied in Aceh. The punishment may include caning, fines (uqubat ghairu maliyyah), or other penalties as prescribed in the Qanun.

The enforcement of Article 170 aims to preserve the integrity of the judicial process by ensuring that witnesses provide truthful testimony based on what they have seen, heard, or experienced. This is crucial in the enforcement of criminal law in Aceh, particularly in “jinayah” cases, which include serious offenses such as adultery (zina), theft, and others. However, challenges exist in the implementation of this article, especially in objectively proving that false testimony has been given during trial. Furthermore, there are interpretive issues regarding how frequently a person must provide false testimony before being sanctioned, or whether a single instance is sufficient. These interpretive challenges can affect the consistency of judicial rulings and thus require further examination.

Methods

This research uses a normative approach, employing legislative, historical, conceptual, and futuristic methods. The primary legal materials include Law Number 1 of 2023 on the Criminal Code (KUHP), Law Number 8 of 1981 on Criminal Procedure, Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 on Witness and Victim Protection, and Aceh Qanun Number 7 of 2013 on Jinayah Procedure. Secondary legal materials consist of books, journals, news, and other relevant literature. The analytical techniques used in this research are descriptive and prescriptive. The method for gathering legal materials in this study involves evaluating the collected materials. The interpretation used is systematic and grammatical. This analysis aims to understand the potential challenges in applying Articles 291 and 373 of the Criminal Code and Article 170 of the Aceh Qanun to witnesses who provide testimony in court.

Results and Discussion

Challenges of Articles 291 and 373 of the Criminal Code and 170 of the Aceh Qanun: Ensnaaring Witnesses Who Give False Testimony

Witnesses giving false testimony can pose significant challenges to the criminal justice system, potentially leading to miscarriages of justice and wrongful convictions. False testimony can arise from various factors, including memory distortion, suggestibility, deception, and misinformation. Witnesses may unknowingly provide false or misleading testimony due to memory errors or the influence of external factors. In cases involving medical expert witnesses, the problem of proffering false testimony remains a concern, highlighting the need for accountability and ethical standards in expert testimonies.

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Children, as witnesses, are particularly vulnerable to giving false testimony due to their suggestibility and unreliable memory recall, emphasizing the importance of proper interview procedures and legal safeguards to ensure the accuracy of their testimonies. Deceptive accounts provided by witnesses, whether through deliberate lies or perjury, can significantly impact the outcome of criminal trials and undermine the credibility of the legal process. Witnesses may also unknowingly provide false testimony based on false memories, where they genuinely believe in the accuracy of their recollections despite them being inaccurate.

The issue of false confessions and witness recantations further complicates the reliability of witness testimonies in criminal trials. False confessions occur when individuals admit to crimes they did not commit, while witness recantations involve retracting previously provided testimonies, highlighting the complexities of witness credibility and the potential for testimonial inconsistencies. Fabricated evidence can also lead to false eyewitness testimony, underscoring the need for rigorous scrutiny of evidence and testimonies in legal proceedings.

Legal frameworks play a crucial role in addressing false testimony, with measures such as witness preparation guidelines, expert witness standards, and interrogation protocols aimed at minimizing the risk of false testimonies in court. Ensuring the credibility and accuracy of witness testimonies is essential for upholding the integrity of the legal system and preventing wrongful convictions. By understanding the factors that contribute to false testimony and implementing appropriate safeguards, the legal system can mitigate the risks associated with inaccurate or deceptive witness testimonies in criminal trials.

The first challenge faced when applying Articles 291 and 373 of the Indonesian Criminal Code (KUHP) is that these articles still cause normative ambiguity because they do not regulate how to test whether a witness's testimony is true or false. Although Article 291 paragraph (2) of the KUHP states "..... witness testimony that is detrimental to the suspect, defendant, or opposing party, the sentence can be increased by 1/3 (one third)," this norm imposes an additional penalty of 1/3 imprisonment, but it raises a new problem because a witness might provide testimony based on what they have seen, felt, or heard, either directly or indirectly, about the incident experienced by the victim. Thus, both the witness's and the victim's testimonies can support or be relevant to each other. Meanwhile, the defendant's testimony contradicts the witness's and the victim's testimonies. The question arises whether Article 291 paragraph (1) of the KUHP can trap the witness. The witness can be prosecuted because their testimony has harmed the defendant. This should not need to be regulated regarding witnesses who harm the defendant because a witness can easily be prosecuted if their testimony does not support the defendant's account.

The second challenge faced in Articles 291 and 373 of the KUHP is that it is the judge who determines whether a witness is providing true or false testimony, even though the public prosecutor can propose that the witness be charged with false testimony, it is still the judge who makes the determination. Referring to Article 174 of the Criminal Procedure Code (KUHP), the witness is first warned to give truthful testimony and informed of the threat of punishment if they continue to provide false testimony. If the witness remains steadfast in their testimony, the judge orders the public prosecutor to detain the witness and subsequently charge them with

perjury. The clerk then drafts the court session minutes, which include reasons for the suspicion that the witness's testimony is false. These minutes are signed by the presiding judge and the clerk and immediately handed over to the public prosecutor for resolution according to the law. If necessary, the court may suspend the original trial until the criminal case against the witness is resolved. The problem with Article 174 of the KUHP is that it does not specify how many times a witness must give false testimony before being charged under Articles 291 and 373 of the KUHP. As long as this is not regulated, the judge evaluates the witness's testimony based on their subjectivity. This implies that judges can arbitrarily apply Articles 291 and 373 of the KUHP due to their authority to assess witness testimony and criminalize witnesses. This was experienced by witness Susi. The panel of judges at the South Jakarta District Court (PN Jaksel) grilled Susi, the household assistant of the family of former Head of the Propam Division of the Indonesian National Police, Inspector General Ferdy Sambo, who was deemed to have given inconsistent testimony. During this trial, the judge reminded Susi that there is a criminal threat for witnesses who give inconsistent testimonies. Susi was presented in the witness testimony examination trial against the defendant Bharada Richard E alias Richard Eliezer Pudihang Lumiu in the premeditated murder case of Brigadier Nofriansyah Yosua Hutabarat, also known as Brigadier J.(Yozami, 1 November 20022)

Witnesses who provide false testimony are regulated in Article 170 of the Aceh Qanun, witnesses who are suspected of being false will be assessed by the chief judge, then the judge warns the witness to provide true testimony. The public prosecutor or the defendant can propose to the chief judge that the witness be charged with the article on false testimony. If the witness has provided false testimony several times, then a report will be made of the witness by the clerk and immediately submitted to the public prosecutor for prosecution. There is a weakness in Article 170 of the Aceh Qanun, namely the unclear rules on how many times a witness can provide false testimony.

The role of judges in courtrooms is multifaceted, encompassing various dimensions of decision-making, behavior, and interactions within the legal system. Judges are pivotal in administering justice, with their decisions carrying significant consequences for litigants and shaping legal outcomes.(Kaheny, 2010) The composition of courts, which may include professional judges and lay judges, influences the deliberation process on matters of guilt and sentencing, highlighting the collaborative nature of judicial decision-making.(Johansen, 2019) Judges' behavior and performance are influenced by factors such as caseload pressure, judicial incentives, demographic characteristics, education, experience, salary, and promotion concerns. Judicial productivity and decision-making are intricately linked to these factors, emphasizing the importance of understanding the determinants of judicial behavior in legal proceedings. Additionally, public opinion, political considerations, and ideological orientations can impact judges' voting patterns and court outcomes, reflecting the complex interplay between judicial decision-making and external influences.(Brace & Boyea, 2008) The attitudinal model of judicial voting suggests that judge ideology is a strong predictor of court outcomes, highlighting the significance of judges' ideological orientations in shaping legal decisions. Judicial role theory indicates that judges' perceptions of their decisional roles influence their decision-making processes, with variations in decision-making linked to judges' political attitudes and policy

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preferences. (Scheb et al., 1991) Strategic judicial behavior, both within courts and in response to external actors, further elucidates the strategic considerations underlying judges' decision-making processes.

Conclusion

Articles 291 and 373 of the Criminal Code and 170 of the Aceh Qanun aim to ensure that witnesses provide truthful testimony in court based on what they saw, experienced, or heard, either directly or indirectly. However, challenges arise when accusing witnesses of giving false testimony. There is potential for multiple interpretations because it is not explicitly stated how many times a witness must give false testimony in order for Articles 291 and 373 of the Criminal Code and Article 170 of the Aceh Qanun to be applied, or whether one false statement is sufficient to apply these articles. This creates the potential for judges to apply these articles subjectively. However, since the enactment of the Witness and Victim Protection Law, Article 10 provides immunity to witnesses as long as they act in good faith and do not provide false testimony. If it is found that the witness did not act in good faith, they have the right to postpone prosecution until the case on which the testimony was based has permanent legal force. Therefore, the judge cannot simply order the public prosecutor to detain the witness. The applicable principle is *lex specialis derogat legi generali*, which means that special rules override general rules. Therefore, the applicable law is the Witness and Victim Protection Act. Therefore, the drafting of future laws by the government and the legislature must establish clear criteria for determining when a witness has given false testimony.

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