

THE RELEVANCE OF 'CHARACTER WITNESS' TESTIMONY IN CRIMINAL CASES IN INDONESIA

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Abstract

Character witnesses evidentiary relevance remains underexplored in Indonesian academic discourse. This article addresses this gap by examining the circumstances in which character witness testimony holds significance. Using qualitative study referencing eleven court decisions in criminal cases, the research identifies three key contexts where character witness testimony proves relevant. First, it serves to elucidate elements crucial to the assessment of a crime. Second, it aids in determining whether a defendant should be exempted from criminal liability. Third, it may influence sentencing considerations by either mitigating or aggravating the severity of penalties imposed. Moreover, the article examines the limitations inherent in character witness testimony. It highlights that such testimony may lack relevance to provide contextual assistance to the judges. Additionally, while character witness testimony can potentially enhance understanding of a defendant's disposition, it cannot serve as sole grounds for conviction. Propensity evidence derived from character witness statements may be considered in sentencing phases to influence severity but cannot independently establish guilt. This article contributes to a nuanced understanding of the role of character witnesses within the Indonesian legal framework, offering insights into their potential impact on judicial decision-making and the boundaries of their evidentiary value in criminal proceedings.

Keywords: *Character Witness; Relevance; Evidence; Indonesia*

1. Introduction

This article discusses the relevance of character witnesses in criminal cases. Character witnesses provide the judges with information on a person by offering opinions or details of certain actions, behavior, or relevant traits to illuminate the person's personality.¹ Based on this definition, there are three scopes of character witness testimony. *First*, a witness may testify on a person's general reputation and conveys the community's views towards them. *Second*, a witness may testify to a person's personality based on their opinion. *Third*, a witness may describe specific acts of a person.² Ultimately, character witnesses are usually asked to testify in the framework of portraying someone as having either a good or bad character.

Under the Indonesian Procedural Criminal Law, character witness is not explicitly defined nor regulated. Article 184(1) of the Procedural Criminal Code ('PCC') regulates five legal means

¹ Jenna Tomei and Robert J. Cramer, "Perceived Credibility of Character Witness: Implications for Trial Consultation," *Journal of Forensic Psychology Practice* 14, no. 3 (2014): 264, <https://doi.org/10.1080/15228932.2014.923710>.

² M.P. Jendrek and Kaplan, M.F., "Social Science Evidence and the Discrepancy in the Federal Rules of Evidence on Character Testimony," *Law & Psychology Review* 11 (1987): 1139–53, <https://psycnet.apa.org/record/1987-34267-001>.

of evidence (*alat bukti*): witness testimony, expert testimony, documents, indication, and defendant testimony. In this context, witness testimony is not limited to those that are based on what was seen, heard, or experienced in relation to the crime as regulated under Article 1(26) of the PCC. Rather, as Article 65 of the PCC stipulates, defendants have the right to introduce witnesses or experts to testify in their favor. Meaning that the testimony may not always be based on what was seen, heard, or experienced in relation to the crime. But it could nonetheless be beneficial for the defendant, for example, a testimony regarding an alibi or the character of the defendant. This suggests that under Article 1(26) PCC, witnesses classify as *a charge* or aggravating witnesses while those under Article 65 classify as *a de charge* or mitigating witnesses. The Constitutional Court in 2010 also clarified that the scope of witness testimony does not always have to be based on what the witness has seen, heard, or experienced in relation to the crime, as long as their testimony is still relevant to the case.

Thus far, nine types of witnesses are acknowledged in law and practice. *First*, victim-witnesses, in which according to Article 160(1)(b) of the PCC must be the first witness whose testimony is heard in court. *Second*, eyewitnesses. *Third*, expert witnesses under Article 184(1) of PCC. *Fourth and fifth*, aggravating and mitigating witnesses under Article 160(1)(c) of PCC. *Sixth*, the witness who made the initial police report. *Seventh*, crown witnesses. This type of witness is not defined in the PCC, however, based on a Supreme Court decision, a crown witness refers to one of the offenders who testify against his accomplice(s) in the same case. *Eight*, justice collaborator witnesses, which refers to offenders who agree to testify against others in his/her case to assist the justice process. The difference between a crown witness and a justice collaborator is related to the procedural context. Crown witness may appear as an effect of the Prosecutor's decision to split the cases that involved more than one offender, in accordance with Article 142 of PCC. On the other hand, a justice collaborator assists the legal enforcer on their own initiative. *Ninth*, a hearsay witness whose information was obtained from a third party. This type of witness can be heard by the court but is subject to further corroboration with other evidence.

The tenth type of witness could be identified as a character witness. From the formality aspect—referring to the five legal means of evidence under Article 184(1) of PCC—a character witness may testify as a 'witness; if they present factual details of the defendant or victim's reputation or behavior. In addition, a character witness may also testify as an 'expert' if they offer professional opinions about the defendant or victim's personality, such as from a psychologist or psychiatrist's point of view. Furthermore, from the strategic aspect, character witnesses could be

brought by either the prosecutor or defense counsel to testify on behalf of the victim or defendant—depending on the context and the necessity. In this regard, character witnesses could also be aggravating or mitigating witnesses.

A character witness is not unfamiliar in court proceedings. There have been many cases where a witness is called upon to testify on the character of either the defendant or the victim including their personality or behavior. However, what is interesting is that in some cases, character witnesses are considered by the judges in rendering their decisions. On the other hand, evidence of character does not have any bearing on the case, as signaled by the lack of reference to it by the judges in their consideration.

Recently, in the trial against Ferdy Sambo *et.al*, a number of witnesses have testified on the character of Nofriansyah Yosua Hutabarat, the victim of an alleged premeditated murder orchestrated by the defendant. Some of these witnesses were family members who testified on the good character of the victim, claiming that the victim was caring, obedient, respectful, and had a sense of duty.³ On the other hand, other witnesses testified that the victim's character was not so ideal, claiming that the victim was arrogant⁴ and had a history of going to nightclubs.⁵ The latter claim was highly debated and questioned by the lawyers of the victim's family. The contestation was that such history does not prove the allegation of sexual violence that was accused upon the victim. In other words, the evidence was argued to be irrelevant. However, the defense counsel responded that it is necessary to observe whether the victim had “contributed” to his own killing which then implies the necessity to look into his profile including past behavior.⁶ Regardless of how these testimonies may have a psychological effect, it is unclear how they are relevant to the case because, from a legal perspective, the character of the victim is not an element that must be proven for premeditated murder under Article 340 of the Criminal Code. Inspired by this issue, this article seeks to explore the relevance of character witnesses.

³ “Isak Tangis Ibu Brigadir J Pecah Saat Bersaksi Di Persidangan,” *CNN Indonesia*, October 25, 2022, <https://www.cnnindonesia.com/nasional/20221025161631-12-865203/isak-tangis-ibu-brigadir-j-pecah-saat-bersaksi-di-persidangan>.

⁴ “Putri Candrawathi Ceritakan Peristiwa Yang Tunjukkan Arogansi Yosua,” *Kompas*, January 11, 2023, <https://nasional.kompas.com/read/2023/01/11/16143041/putri-candrawathi-ceritakan-peristiwa-yang-tunjukkan-arrogansi-yosua>.

⁵ “Febri Diansyah Buka Alasan Beri Bukti Foto Brigadir J Di Klub Malam,” *CNN Indonesia*, December 30, 2022, <https://www.cnnindonesia.com/nasional/20221229220013-12-893882/febri-diansyah-buka-alasan-beri-bukti-foto-brigadir-j-di-klub-malam>.

⁶ “Febri Diansyah Buka Alasan Beri Bukti Foto Brigadir J Di Klub Malam.”

Previous studies have discussed the relevance of witness testimony, particularly with regard to aggravating and mitigating witnesses⁷ which highlights their status as circumstantial evidence and how such status affects their value in court. However, less attention has been afforded to character witnesses specifically regarding the scope of their testimony and how it could be relevant in determining a case. This article will therefore address how character witnesses could be relevant for judges when examining criminal cases in Indonesia.

The discussion is divided into three points. First, it will start with relevance theory and how it is reflected in criminal procedural law in Indonesia. Second, the paper will present three ways in which character witnesses are relevant based on selected judicial decisions. Third, the article will also discuss the limitations of using character witness testimony.

2. Method

This article is based on normative research, utilizing secondary data consisting of primary and secondary sources. Primary sources consisted of relevant laws including the regulations about evidence in criminal cases that apply in Indonesia. On the other hand, secondary sources consisted of literature that explains the relevant regulations.⁸ Furthermore, the research employed statute and case approaches. The statute approach was used to shape the legal framework that applies to character witnesses.

Meanwhile, the case approach was used to observe the relevance of character witnesses in criminal cases. In this regard, eleven judicial decisions were selected regarding different crimes. This was intentionally done to demonstrate the widespread use of character witnesses that are not limited to certain types of crime. The decisions were taken from the Online Directory of Decisions of the Indonesian Supreme Court. They were selected from the vast cases that were decided by district courts within the past six years. Then, the cases were re-selected based on how the testimonies of the character witnesses were considered by the judges in their analysis.

⁷ Eky Chaimansyah, "Hak Tersangka/Terdakwa Untuk Mengajukan Saksi a de Charge (Saksi Meringankan) Dalam Proses Perkara Pidana," *Lex Crimen* 5, no. 2 (2016): 37–45, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/11114>; Sherly Wurarah, "Tata Cara Mengajukan Saksi Yang Menguntungkan Berdasarkan Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana," *Lex et Societatis* 5, no. 6 (2017): 73–80, <https://doi.org/10.35796/les.v5i6.17910> ; Karunia Pangestu, Heru Suyanto, and Rosalia Dika Agustanti, "Application of Circumstantial Evidence in Criminal Laws in Indonesia," *Jurnal Hukum Novelty* 12, no. 1 (2021): 54–66, <http://dx.doi.org/10.26555/novelty.v12i01.a16996>.

⁸ Roy M. Mersky and Donald J. Dunn, *Legal Research Illustrated*, 8th ed. (New York: Foundation Press, 2002).

After selecting the decisions, the Author conducted a thematic analysis⁹ to identify and analyze patterns found in the data. It is equally important to acknowledge that the analysis of the decisions is not meant to produce a generalization or exclusive conclusion to the overall topic. This is due to the small number of judicial decisions used in this study, which do not represent the judicial practices in Indonesia. The decisions are only meant to provide evidence of how character witnesses are relevant in criminal cases.

3. Results and Discussion

3.1. Relevance in Theory

Relevance is a part of assessing the weight of proof or *bewijskracht*. According to Hiariej, the weight of proof refers to the ability of evidence to prove a criminal charge. The weight of proof can be measured in three ways. *First*, by measuring the relevance of evidence. *Second*, by determining the admissibility of evidence. *Third*, by corroborating (or verifying) the evidence with other pieces of evidence. This article will only focus on relevance because it is the substantial aspect to measure the weight of proof, whereas admissibility is a procedural requirement because it relates to the legality of how evidence is obtained. Furthermore, corroboration is also excluded from this discussion because this paper only intend to analyze the value of character witness in itself, without having it affected by other evidence.

In this context, evidence is deemed relevant if it tends to either confirm or disconfirm a certain fact in the case,¹⁰ which can also be supported by the absence of conflict between the evidence. This principle is also embodied in Article 185(6) of the PCC which reads: In assessing the truth of witness testimony, a judge must consider; the consistency between the testimony with another testimony, the consistency between the testimony with other evidence, the reason that explains how the witness came to know the fact that is being testified, and the way of life and the morality of a witness and any and all matters which normally may influence whether or not a testimony could be believed.

That said, the evidence in question is not expected to be entirely the same or reveal the same facts as other evidence. Rather, it may occur that a shred of evidence offers new information as long as it does not conflict with the pre-existing fact.

⁹ Lisa Webley, "Qualitative Approaches to Empirical Legal Research," in *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010), <https://doi.org/10.1093/oxfordhb/9780199542475.013.0039>.

¹⁰ Constantine Theophilopoulos and Adrian Bellengère, "Relevance, Admissibility and Probative Value in a Rational System of Evidence: A South African Perspective," *PER/PELJ* 25 (2022): 6, <http://dx.doi.org/10.17159/1727-3781/2022/v25ia11966>.

In theory, relevance can be divided into 'logical relevance' and 'conditional relevance.'¹¹ Evidence is deemed to be logically relevant if it could offer a logical observation of a fact or proposition pertaining to the crime in question. For example, a person testifies that they had witnessed the defendant and the victim drinking alcohol and being drunk. This testimony could be taken as logically relevant to explain the cause of the physical confrontation between the defendant and the victim that led to the criminal charge of assault. On the other hand, conditional relevance refers to evidence whose relevance would depend on the confirmation of another fact. For example, in a case of fraud, a person testified having witnessed the defendant and the victim signing a purchase and sale agreement over the defendant's house. This testimony could be accepted as relevant depending on the confirmation that the house was indeed legally owned by the defendant.

The above explanation suggests that the relevancy of character witness testimony depends on the context of examination and the necessity of their testimony—particularly considering what needs to be proven and how to best present a certain image.¹² In essence, the testimony of a character witness must be useful for the judges' assessment of the case. That being said, character witnesses could be relevant in three main contexts. First, to assess the elements of a crime. Second, to exclude criminal responsibility. The third is to aggravate or mitigate the criminal sentence.

3.2. Relevance of Character Witness Testimony in Proving the Elements of Crime

In this context, character witnesses could be relevant as evidence for both objective (*actus reus*) and subjective (*mens rea*) elements. The relation between character witnesses and the mental element will be discussed in the next part. But relating to the objective element, the testimony of a character witness may be relevant to explain how the defendant's action affects the victim's behavior. By extension, this kind of testimony could support the allegation that the act fulfills the objective element of the crime.

An example of this is a case adjudicated by the High Court of Semarang. The case concerned an allegation of spousal negligence under Article 49(a) jo. Article 9(1) of Law No. 23 of 2004 regarding Domestic Violence. Article 9(1) reads: "Every person is prohibited from neglecting the

¹¹ Matthew Kotzen, "Conditional Relevance and Conditional Admissibility," *Law and Philosophy*, 2022, 3, <https://doi.org/10.1007/s10982-022-09462-w>.

¹² Adrian Keane, Paul McKeown, *The Modern Law of Evidence*, 14th ed. (Oxford: Oxford University Press, 2022), 145 – 200.

members of their household, given that the applicable law or on the basis of an agreement, they are obligated to provide livelihood and care.

This article is to be read together with Law No. 16 of 2019 on the Amendment of Law No. 1 of 1974 regarding Marriage which requires a husband to attend to the family's household needs including finances.¹³ In addition, Article 9(2) of the Law on Domestic Violence further regulates that negligence under Article 9(1) also applies to the act of making someone subject to their control through economic dependency by prohibiting the person from working or limiting their access to economic means.¹⁴ In this context, demonstrating the victim's condition of being financially limited would be inherent to prove negligence.

Reverting to the case, a psychologist was called upon to testify on the victim's behavioral and mental condition. According to the psychologist, the victim became disconnected or detached. She was overwhelmed with fear, trauma, and anxiety, and was eventually diagnosed with mild depression. These behavior and mental conditions were caused by the negligence of her husband (the defendant) who refused to provide care and financial support due to his intention to marry another woman. The High Court upheld the decision of the First Instance Court. The judges considered the victim's diagnosis and expert testimony regarding her behavior and mental conditions as the result of the defendant's actions of limiting the victim's economic means. Thus, fulfilling the objective element of negligence under Article 49(a) jo. Article 9(1).

Another example can be seen in a case adjudicated by the District Court of Denpasar¹⁵ about domestic psychological violence under Article 45(1) of Law No. 23 of 2004 regarding Domestic Violence. Under Article 7 of such law, domestic psychological violence is defined as: "Acts that cause fear, the loss of self-confidence, or the willingness to act, or powerless, and/or the psychological suffering of a person."

In terms of evidence, psychological violence is more challenging to prove than physical violence. The reason is that physical violence can usually be seen by marks, bruises, and scars. On the other hand, psychological violence is harmful to the mental health and spiritual well-being of

¹³ Angelin Rebecca Mumbunan, "Penerapan Sanksi Pidana Kepada Seorang Suami Yang Tidak Mampu Membiayai Istri Dan Anaknya Menurut Undang-Undang No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," *Lex Crimen* VIII, no. 2 (2018): 128–37, <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/22717>.

¹⁴ Hotman Sitorus, "Penelantaran Orang Lain Menurut Undang-Undang Nomor 23 Tahun 2004," *Yure Humano* 4, no. 1 (2020): 1–17, <https://mputantular.ac.id/ojshukum/index.php/yurehumano/article/view/76>.

¹⁵ Decision No. 578/Pid.Sus/2021/PN.Dps (District Court of Denpasar 2021).

a person—things that could not be easily seen as physical marks.¹⁶ Thus, psychological violence can be indicated instead by certain abnormal behavior, such as the loss of will for self-care, loss of interest in social interaction, depression, stress, aggression, disruption of daily activities or work, loss of courage, acting confused and disoriented, self-harm, and psychosomatic illness.¹⁷ These changes in behavior and personality in victims are usually explained by psychologists, thus also qualifying them as a character witnesses.

Reverting to the case, the Defendant would occasionally video call with his mistress, often in the presence of his wife (the victim). Sometimes during those calls, he would even force his wife to speak with the mistress who would tell the wife that she and her husband had been having a sexual relationship and were expecting their first child together. A psychologist testified in court about the mental state of the wife as a result of her husband's actions. According to the psychologist, the victim displayed behavior that was different from her normal condition, including having trouble concentrating, losing her appetite, and having suicidal thoughts. The judges considered the testimony relevant in assessing the objective element of psychological violence.

Another example is a case adjudicated by the District Court of Rangkasbitung¹⁸ about child molestation that resulted in injury and mental disorder under Article 82(4) jo. Article 76E of Law No. 17 of 2016 on the Enactment of Government Regulation in Lieu of Law No. 1 of 2016 regarding the Second Amendment of Law No. 23 of 2002 on Child Protection. One of the objective elements that needed to be proven was that the actions of the defendant had caused the victim to suffer from a mental disorder. For such purposes, the prosecutor called a psychiatrist who had been caring for the victim to testify in the trial. During this, the psychiatrist testified that since the incident, the victim had trouble communicating with others, suffers from anxiety, tends to be closed off, and showed other signs of depression. The testimony on the victim's behavior was considered adequate for the judges to conclude that the element is satisfied.

¹⁶ Dheid Setiawan, Muhadar, and Wiwie Heryani, "Pembuktian Tindak Pidana Psikis Dalam Kasus Kekerasan Dalam Rumah Tangga," *Pagaruyuang Law Journal* 2, no. 1 (2018): 1–23, <https://doi.org/10.31869/plj.v2i1.886>.

¹⁷ Erwin Asmadi, "Peran Psikiater Dalam Pembuktian Kekerasan Psikis Pada Korban Tindak Pidana Kekerasan Dalam Rumah Tangga," *De Lega Lata: Jurnal Ilmu Hukum* 3, no. 1 (2018): 43–44, <https://doi.org/10.30596/dll.v3i1.3136>.

¹⁸ Decision No. 29/Pid.Sus/2022/PN Rkb. (District Court of Rangkasbitung 2022).

3.3. Relevance of Character Witness Testimony in Determining the Exclusion from Criminal Responsibility

Furthermore, a character witness could be relevant to assess the exclusion from criminal responsibility by reason of a legal excuse. Under Article 44(1) of the Criminal Code, a person cannot be held criminally responsible if they suffer from mental illness or disorder. However, this does not necessarily mean that suffering from mental illness will deliberately excuse a defendant. Rather, the illness must render the person incapable of comprehending the nuances of their action. In this sense, a person fails to comprehend why they conducted their actions; lacked the capability to decide whether to act or restrain from their free will; and fails to understand the illegal nature and the consequences of their actions.¹⁹

There are three known methods to determine whether a person is mentally insane. First, is the biological method, which entails the investigation of biological abnormal signs in a person's body that may affect their mental capacity. Second, is the psychological method which entails the investigation of psychological abnormal signs that could assist in determining a diagnosis. The third approach is a combination of both biological and psychological methods.²⁰ In this context, character witnesses could be helpful in the assessment of either of the three methods. The reason is that observation of a person's behavior can be helpful to see how well it reflects their psychological abnormal signs or their mental capacity as affected by their biological abnormal signs.

An example can be seen in a case adjudicated by the District Court of Tasikmalaya about a man who ripped off pages from the Quran and threw them to the streets after being frustrated at his struggle with copying the religious text with Arabic letters. Two people walked by, witnessed the act, collected the ripped pages off the street, and reported the man to the local police. The man was eventually charged with blasphemy under Article 156(a) of the Criminal Code.

During the trial, several witnesses testified about how the defendant was mentally disturbed, as he would often laugh by himself, sleeps at a nearby abandoned house, and was difficult to communicate with. These testimonies corroborated a testimony by a psychiatrist who diagnosed the defendant with *schizophrenia residual*. In his testimony, the psychiatrist claimed that the defendant's behavior matched the characteristics of someone with such a diagnosis. The behavior

¹⁹ N.M. Raditya Pawani Peraba Sugama and Suatra Putrawan, "Analisis Yuridis Mengenai Kemampuan Pertanggungjawaban Pidana Dalam Pasal 44 KUHP," *Kertha Wicara* 7, no. 4 (2018): 6–7, <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/41970>.

²⁰ Sugama and Putrawan, 10.

includes acting passive and unenergetic, blank eye contact, incoherent communication, cognitive regression, and ineffective problem-solving.

Another example can be seen in a case adjudicated by the District Court of Tanjung. The case concerned an allegation of domestic violence that caused the death of a victim under Article 44(3) of Law No. 23 of 2004 regarding the Eradication of Domestic Violence. In this case, the defendant hit, the victim (his wife), with a rock to her head seven times until she was left unconscious and eventually died. The act was committed due to the defendant's suspicion that his wife was having an affair. During the trial, an expert testified on the basis of a formal diagnosis that the defendant suffers from *schizophrenia unspecified* which manifests into a behavioral disorder. The expert testified that the defendant's behavior matches the disorder's indications. The judges took the diagnosis into account in addition to their own observation of the defendant's behavior in court including abnormal speech, unstable emotion, and his attempt to commit suicide while in court custody.

From these cases, the character witnesses testified regarding the outward behavior of the defendants such as being passive and communicating incoherently. These behaviors were considered to corroborate the diagnosis of *schizophrenia* by the experts. Therefore, in other words, these testimonies were relevant as they reflected the psychologically abnormal signs identified by the psychiatrist in each case.

3.4. Relevance of Character Witnesses' Testimony as Aggravating or Mitigating Consideration

Finally, testimonies of character witnesses can be relevant as aggravating or mitigating consideration. This implies that character witnesses can also be considered aggravating or mitigating witnesses. These types of witnesses are regulated under Article 160(1)(c) of the PCC which requires the judges to hear their testimonies. Aggravating witnesses are typically presented by the Prosecutor to support their evidence by offering information that could prove the allegation or aggravate the criminal sentence. Meanwhile, mitigating witnesses are typically presented by the Defense Counsel to disprove the Prosecutor (in order to set the defendant free) or mitigate the criminal sentence. However, in certain cases, the testimony of mitigating witnesses may in turn offer more proof that the defendant is guilty.²¹

²¹ Barungam Siregar, "Nilai Kebenaran Dalam Keterangan Saksi 'Meringankan' Menjadi Saksi Memberatkan (Analisa Perkara Pidana Nomor: 696:Pid.B/2015/PN.Plg)," *Lex Lata: Jurnal Ilmiah Ilmu Hukum* 1, no. 3 (2019): 236, <http://dx.doi.org/10.28946/lexl.v1i3.474>.

An example of how the testimony of a character witness is relevant as an aggravating consideration can be seen in a child molestation case adjudicated by the District Court of Kota Agung. The case concerned a seventeen-year-old minor and a man who became acquainted through interactions on Facebook. After agreeing to meet, the minor was brought to the defendant's brother's home where she was forced to perform oral sex on the defendant and was raped by the defendant's brother as well. For such actions, the defendant was charged with child molestation under Article 76D jo Article 81(2) of Law No. 17 of 2016 on the Stipulation of Government Regulation in the Lieu of Law No. 1 of 2016 regarding the second amendment to Law No. 23 of 2002.

Based on the testimony of witnesses, under normal circumstances before the crime occurred, the minor was known to be outgoing, and able to interact with her surroundings. She had a strong memory and the intellectual ability to overcome any struggle at school. But since she was molested, the victim struggled with emotional control and did not react or respond to any interaction. The defendant and his brother were eventually found guilty of child molestation and were sentenced to five years imprisonment. As a factor to aggravate their sentences, the judges considered the effects that the crime had upon the mental state and the behavior of the victim.

On the other hand, examples of how character witnesses could be relevant in mitigating criminal sentences can be seen in two cases. The first one was adjudicated by the District Court of Tangerang. In this case, the defendant was accused of "intentionally driving a vehicle in a way that endanger others resulting in traffic accidents and casualties" under Article 311(5) of Law No. 22 of 2009 regarding Traffic and Land Transportation. During trial, a forensic psychologist testified that the defendant suffered from bipolar or infuse control disorder that causes the inability to regulate emotions while consuming alcohol. The judges took interest in inquiring about how bipolar affects an individual and their behavior. Eventually, the judges considered the conditions of the defendant in mitigating the criminal sentence. The prosecutor indicted the defendant with eleven years of imprisonment, while the judges settled with five years and six months.

The second case was adjudicated by the District Court of Melonguane. The defendant was accused of physical assault under Article 351(1) of the Criminal Code due to a physical altercation between the defendant and the victim. The altercation started with a confrontation by the defendant who proceeded to hit the victim who was also her boyfriend. To make her stop, the boyfriend slapped her across the face, which then prompt her to follow and pursue the victim resorted to

more hitting and throwing objects at each other. The defendant argued that her actions were self-defense.

As part of their assessment, the judges referred to the opinions of Van Hamel. According to him, in cases of self-defense, one of the things that must be considered is the character or behavior of the person being attacked, which in this case means the defendant. The judges considered witnesses who claimed that the defendant is perceived as shy and embarrassed because of her extramarital relationship with her boyfriend (the victim), a policeman, with whom they raised a child. This results in her being isolated and hesitant to seek help from others. In turn, the defendant often became frustrated and blamed it on her boyfriend.

The claim of self-defense was rejected by the judges because her actions were not spontaneously done. Rather, she chose to pursue the victim and started yet another physical altercation. However, the judges considered the defendant's circumstances and cause of behavior to be a mitigating factor. In the end, the judges sentenced her to one-month detainment—which is one month less than what the prosecutor had indicted her.

3.5. The Lack of Proper Context

Based on the above analysis, the testimony of character witnesses would not be relevant if it does not contribute to either one of the three contexts mentioned. For example, a case that was adjudicated by the District Court of Bandung. In this case, the defendant was charged with having committed corruption by accepting gifts when it was known or reasonably suspected that such gifts were given because of power or authority related to the defendant's position under Article 11 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption jo Article 55(1) and Article 64(1) of the Criminal Code. The defendant presented four witnesses during the trial to testify about his good character.

Overall, these witnesses claimed that the defendant was perceived by his surroundings to have good character and a tendency to help others. Particularly, he cared about the well-being of others especially the less fortunate. He was always very polite and appreciates his employees. One witness recalled how the defendant initiated a weekly program to collect donations in order to financially help people who were less fortunate. In the end, the judges found that the defendant was not guilty as not all the elements of bribery were fulfilled. But the testimonies from the character witnesses were not considered in the judges' determination.

Another example is a case adjudicated by the District Court of Pekanbaru about the attempted selling of stolen goods under Article 480 jo. Article 55(1) jo. Article 53(1) of the Criminal Code. In this case, a witness, who also happened to be complicit in the crime, testified that the defendant was his co-worker. During their time working together, the witness observed that the defendant was honest and had never caused any trouble at work. However, the testimony was also not considered by the judges in their ruling.

From these two cases, neither the articles on bribery nor the attempted selling of stolen goods require the consideration of character. Therefore, the character of the defendant or the victim would not affect the assessment of elements of the crime. In contrast to the previous cases about spousal negligence and psychological violence where the changes in the victims' behaviours were relevant as evidence to show the intensity of the violence in question. Moreover, the testimonies did not relate to the mental state of the defendants, therefore, irrelevant for the assessment of criminal responsibility. Finally, aside from that, the testimonies were not considered to mitigate the criminal sentences, because, unlike the previously mentioned cases, the testimonies of good character were not associated with the case itself since they did not contribute to explaining the cause or consequence of the crime. Rather, they were mere observations of the character prior to the case.

3.6. The Limited Use of Character Evidence as Propensity Evidence

Propensity evidence refers to evidence of past behavior that shows the tendency of a person to behave in a certain way. Propensity evidence is meant to show bad character, which can be presented in the form of a prior criminal conviction or recollection of a person's action or behavior by a witness. In practice, propensity evidence is used by the prosecutor to argue and convince the judges that the action of the defendant is part of a historical pattern—the idea that the defendant has done something similar in the past, therefore, he has also committed the same thing in the present. In addition, propensity evidence can also be used to prove the defendant's motive or intent to commit the present allegation. This is known to be 'character evidence in disguise.'²² The use of this type of evidence is a disadvantage for the defendant because it tends to show that a person

²² Michael D. Cicchini, "A Clean Record as Character Evidence," *Mississippi Law Journal* 90, no. 2 (2021): 315–46, <https://www.mississippilawjournal.org/journal-content/a-clean-record-as-character-evidence/>.

who has previously committed a crime is more likely to commit the same or similar crime than someone who had not previously commit a crime.²³

The use of this type of evidence is debatable. On the one hand, propensity evidence is argued to support the legitimacy of the evidentiary process as it is capable of strengthening the conviction (*keyakinan*) that the defendant is capable of committing the alleged crime.²⁴ However, on the other hand, using propensity evidence could create legal implications in several ways. *First*, it may create the tendency to penalize a person for past misdeeds or for being a bad person. *Second*, it would seem unfair to expect the defendant to not only defend themselves against the present allegation but also past ones.²⁵ *Third*, it would allow assumptions to be made against the defendant who should be presumed innocent until proven legally guilty.

Seeing the negative impact that propensity evidence might have, this paper views that its use should be limited. First and foremost, it cannot be used as a basis to render the defendant guilty. In this sense, it cannot be used as a basis to allow assumptions to be made against the defendant.²⁶ Rather, the evidence used to convict a person should be limited to those directly connected to the present allegation.

In this regard, I argue that character evidence as propensity evidence should only be used as an aggravating factor if such evidence clearly reveals recidivism. An example can be seen in a case about a motorcycle theft that was adjudicated by the District Court of Balikpapan in 2020.²⁷ In this case, the defendant's prior criminal conviction was addressed in court. It was revealed that the defendant had been criminally sentenced to two years imprisonment in 2017 for stealing another motorcycle. In the court's consideration, the prior criminal conviction was taken as an indication of recidivism and used by the judges as an aggravating factor but not as a reason to convict.

²³ Liat Levanon, "'Bad Character', Tragic Errors and Deep Ignorance," *Legal Studies* 39 (2019): 676–93, <https://doi.org/10.1017/lst.2018.56>

²⁴ Justin Sevier, "Legitimizing Character Evidence," *Emory Law Journal* 68, no. 3 (2019): 441–508, <https://scholarlycommons.law.emory.edu/elj/vol68/iss3/1/>.

²⁵ Sevier, 457.

²⁶ Louis M. Natali Jr., "Are You Going to Arraign His Whole Life?": How Sexual Propensity Evidence Violates the Due Process Clause," *Loyola University Chicago Law Journal* 28, no. 1 (1996): 11, <https://lawcommons.luc.edu/lucj/vol28/iss1/2/>

²⁷ Decision No. 382/Pid.B/2020/PN Bpp (District Court of Balikpapan 2020).

4. Conclusion

In conclusion, the testimony of character witnesses could be relevant if it is delivered within one of these three contexts. First, if the testimony is useful to assess the elements of the crime—either the objective or mental elements. Second, is if the testimony can assist the judges in determining whether the defendant should be excluded from criminal responsibility. Third, if the testimony could provide reasons to aggravate or mitigate the criminal sentence. *In contrario*, if a character witness cannot offer information useful to assess either one of these three contexts, then their testimony would be irrelevant. Furthermore, the use of character evidence as propensity evidence cannot be used as a basis to convict a defendant on account of its indirect nature to the allegation considering that it only provides evidence of past behavior. This limitation is necessary seeing the legal implications propensity evidence could create for the defendant which includes allowing assumptions to be made against the defendant who should be presumed innocent until proven legally guilty. In this regard, character evidence as propensity evidence could only be used to aggravate the criminal sentence.

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