



Expert Reposition in Criminal Case Investigation: A Comparison with the French Criminal Procedure Law

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Abstract

Criminal procedural law is a crucial component of the criminal law system, governing the procedures for enforcing criminal acts, from the investigation, inquiry, prosecution, and trial to the trial itself. Expert testimony plays a crucial role in proving criminal cases. Expert testimony is necessary to provide explanations on matters requiring specialized knowledge or expertise that cannot be directly understood by the judge or the parties in the trial. The 2025 Criminal Procedure Code (KUHAP) recognizes expert testimony as a form of evidence in criminal proceedings, but does not clearly define the expert's status in the trial process. This research is a normative legal research. It uses a statutory approach, a legal concept approach, and a comparative approach to examine the positive norms governing expert examination in criminal trials. The analysis stage of normative legal research is conducted through a review of collected primary, secondary, and tertiary legal materials. This effort to reform criminal procedural law was then realized through the establishment of the 2025 Criminal Procedure Code, which replaced the previous 1981 Criminal Procedure Code. The 2025 Criminal Procedure Code aims to adapt the criminal justice system to developments in information technology and the need for a more modern evidentiary system. In the French legal system, experts are known as expert judiciaires, appointed by judges to provide technical analysis of the facts related to criminal cases. Furthermore, Article 157 of the Code de procedure pénale stipulates that experts appointed by judges must be drawn from the official list of experts registered with the court. Compared to the French legal system, this repositioning still does not fully establish experts as independent parties in the criminal justice process. Therefore, strengthening regulations regarding the mechanism for appointing experts by the court and standards for scientific methodology in providing expert testimony are crucial to improving the objectivity and quality of evidence in the Indonesian criminal justice system.

Abstrak

Hukum acara pidana merupakan bagian penting dari sistem hukum pidana yang mengatur tata cara penegakan hukum terhadap suatu tindak pidana, mulai dari tahap penyelidikan,

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penyidikan, penuntutan, hingga pemeriksaan perkara di pengadilan. Salah satu alat bukti yang memiliki peranan penting dalam pembuktian perkara pidana adalah keterangan ahli. Keterangan ahli diperlukan untuk memberikan penjelasan mengenai hal-hal yang membutuhkan pengetahuan atau keahlian khusus yang tidak dapat dipahami secara langsung oleh hakim ataupun para pihak dalam persidangan. Terdapat kekaburan norma terkait dengan kedudukan dan independensi ahli dalam proses persidangan pidana dalam KUHAP 2025 yang menempatkan keterangan ahli sebagai salah satu alat bukti dalam pembuktian pidana, tetapi tidak memberikan pengaturan yang jelas mengenai status ahli dalam proses peradilan. Penelitian ini merupakan jenis penelitian hukum normatif. Penelitian ini menggunakan pendekatan perundang-undangan, pendekatan konsep hukum dan pendekatan perbandingan untuk mengkaji norma-norma positif yang mengatur pemeriksaan ahli dalam persidangan pidana. Tahap analisis dalam penelitian hukum normatif dilakukan melalui penelaahan terhadap bahan hukum primer, sekunder, dan tersier yang telah dikumpulkan. Upaya pembaruan hukum acara pidana tersebut kemudian diwujudkan melalui pembentukan KUHAP 2025 yang menggantikan KUHAP 1981 sebelumnya. KUHAP 2025 ini bertujuan untuk menyesuaikan sistem peradilan pidana dengan perkembangan teknologi informasi serta kebutuhan akan sistem pembuktian yang lebih modern. Dalam sistem hukum Prancis, ahli dikenal sebagai *expert judiciaire*, yaitu ahli yang ditunjuk oleh hakim untuk memberikan analisis teknis terhadap fakta yang berkaitan dengan perkara pidana. Selain itu, Pasal 157 *Code de procédure pénale* mengatur bahwa ahli yang ditunjuk oleh hakim harus berasal dari daftar resmi ahli yang terdaftar di pengadilan. apabila dibandingkan dengan sistem hukum Prancis, reposisi tersebut masih belum sepenuhnya menempatkan ahli sebagai pihak yang independen dalam proses peradilan pidana. Oleh karena itu, penguatan pengaturan mengenai mekanisme penunjukan ahli oleh pengadilan serta standar metodologi ilmiah dalam pemberian keterangan ahli menjadi penting untuk meningkatkan objektivitas dan kualitas pembuktian dalam sistem peradilan pidana Indonesia.

1. Introduction

Criminal procedural law is an important part of the criminal law system that regulates law enforcement procedures for a criminal act, starting from the stage of investigation, investigation, prosecution, to examination of cases in court. Through the criminal procedure law, the law enforcement process not only aims to impose criminal penalties on the perpetrators, but also to ensure that the process is carried out fairly and based on the applicable legal rules. From the perspective of criminal law doctrine, criminal procedural law basically aims to find the material truth of a criminal event that occurred so that the judge can make a fair and appropriate verdict.¹ In the criminal justice process, the evidentiary stage has a very decisive role because through the evidentiary

¹ Suyanto, Criminal Procedure Law (Yogyakarta: Deepublish, 2020), 5.

process the judge obtains confidence about whether or not a criminal act charged against the defendant is proven. According to M. Yahya Harahap, proof in the criminal procedure law is a provision that regulates the methods justified by law to prove the guilt of the defendant through valid evidence.² Thus, the evidentiary system is an important instrument in ensuring the achievement of the goals of criminal procedural law, which is to find the material truth and provide legal certainty.

One of the evidence that has an important role in proving criminal cases is expert testimony. Expert testimony is needed to provide an explanation of matters that require special knowledge or expertise that cannot be directly understood by the judge or the parties to the trial. In modern criminal justice practice, the role of experts is increasingly important because many criminal cases involve scientific and technical aspects, such as cybercrime, environmental crimes, health crimes, and various forms of technology-based crime. Therefore, the involvement of experts in the criminal justice process is one of the means to help judges gain a more comprehensive understanding of the facts of the case. Conceptually, expert testimony in criminal procedure law is information provided by someone who has special expertise to explain a matter related to a case being examined in court.³ In the doctrine of criminal procedure law, the main difference between witnesses and experts lies in the source of knowledge used in providing evidence. Witnesses give information about events that they have seen, heard, or experienced themselves, while experts give opinions based on their scientific expertise.⁴ Thus, expert testimony is not based on direct experience of a criminal event, but on a scientific analysis of the facts related to the case.

The rapid development of science and technology also affects the development of criminal procedural law, especially in terms of proving criminal cases. The increasing complexity of criminal cases requires the use of a scientific approach in the evidentiary process, so that the role of experts becomes increasingly strategic in the criminal justice system. Legal research also shows that expert testimony is indispensable in the process of examining criminal cases because it can help clarify facts that cannot be explained by judges or law enforcement officials without the help of special knowledge.⁵ In line with these developments, the Indonesian government has updated the criminal procedure law by enacting Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP 2025). This update aims to adapt the criminal justice system to societal developments, technological advancements, and the demands of human rights protection. In this law, the regulation of evidence has undergone significant developments, including the recognition of various forms of new evidence that are relevant to technological and scientific developments.

In this context, expert examination in criminal cases becomes increasingly important because expert testimony not only serves as evidence, but also as a means for judges to understand technical or scientific facts related to a criminal act. The presence

² M. Yahya Harahap, *Discussion of Problems and Implementation of the Criminal Code: Examination of Court Hearings, Appeals, Cassation and Review* (Jakarta: Sinar Grafika, 2002), 283.

³ Andi Hamzah, *Indonesian Criminal Procedure Law* (Jakarta: Sinar Grafika, 2016), 259.

⁴ Adami Chazawi, *Lessons in Criminal Procedure Law* (Jakarta: RajaGrafindo Persada, 2017), 198.

⁵ Prisco Jeheskiel Umboh, *The Function and Benefits of Expert Witnesses in Providing Testimony in the Criminal Case Process*, *Lex Crimen* 2, no. 2 (2013): 112.

of experts at the trial is expected to help the judge in assessing the evidence in a more objective and rational manner so that the resulting verdict truly reflects the material truth. However, in the practice of criminal justice, various problems often arise related to the position and examination of experts, such as differences of opinion between experts, the independence of experts, and the power of proving expert testimony in the criminal evidence system.

In the Indonesian legal system, the regulation regarding expert examination in criminal cases is regulated in the 2025 Criminal Procedure Code which places expert testimony as one of the valid evidence in criminal evidence, as stipulated in Article 235 paragraph (1) of the 2025 Criminal Procedure Code which states the types of evidence that can be used in the evidentiary process in court. In this provision, expert testimony is positioned on a par with other evidence such as witness statements, letters, defendants' statements, evidence, and electronic evidence.⁶ Thus, expert testimony has an important position in helping the judge assess the facts related to the criminal case being examined. In trial practice according to the 2025 Criminal Procedure Code, experts are presented to provide information based on their special expertise to explain a fact or circumstance that requires scientific or technical knowledge. The expert examination is carried out under oath and the expert provides information about his professional opinion related to the case being examined. However, expert opinions are not binding on judges because judges still have the freedom to judge the evidentiary strength of each piece of evidence based on their beliefs. In the doctrine of Indonesian criminal procedure law, it is explained that expert testimony is basically a tool for judges to understand certain facts that require special knowledge.⁷

In contrast to the Indonesian system, the French criminal procedure law regulated in the *Code de procédure pénale* places experts as part of the evidentiary mechanism that is under the supervision of a judge. In the French legal system, experts are known as *expert judiciaire*, i.e. judicial experts who are in charge of providing technical analysis to the court. The provisions on the use of experts are specifically regulated in Article 156 of the *Code de procédure pénale*, which gives the judge the authority to order an examination by an expert if special knowledge is required to explain certain facts in a criminal case.⁸ When compared to the 2025 Criminal Procedure Code, there are several fundamental differences between the arrangement of expert examinations in Indonesian and French criminal procedure law. In the Indonesian legal system, experts are generally presented by the parties in the trial as part of the evidentiary strategy. Meanwhile, in the French legal system, experts are more often appointed by judges as part of the investigation or evidentiary process carried out by the courts. This shows that the French legal system places experts as court assistants (*auxiliaire de justice*) who work independently to assist judges in understanding the technical aspects of a case. In addition, in the Indonesian legal system, expert testimony is explicitly positioned as evidence in the criminal proof system, while in the French legal system, expert opinion is seen as a technical assistance for judges in assessing the facts of the case. However, in

⁶ Republic of Indonesia, Law Number 20 of 2025 concerning the Criminal Procedure Law, Article 235 paragraph (1).

⁷ Adami Chazawi, *Lessons in Criminal Procedure Law* (Jakarta: RajaGrafindo Persada, 2017), 198.

⁸ France, Code of Criminal Procedure, art. 156.

both legal systems, judges still have the freedom to judge the probative strength of expert opinions and are not absolutely bound by the opinions given by experts.

Research regarding the status of experts in the criminal justice system has been conducted by Rafiqa Qurrata A'yun in the article "The Problems of Expert Witness in Criminal Law," which addresses the functions, qualifications, objectivity, and status of experts during investigation and trial proceedings but stops short of developing the concept of repositioning the expert as an independent actor within the investigation itself.⁹ Furthermore, Luh Putu Kristyanti, in "Saksi Ahli sebagai Alat Bukti dalam Hukum Acara Pidana Indonesia" (Expert Witnesses as Evidence in Indonesian Criminal Procedural Law), focuses her study on the status of expert testimony as a form of evidence under Indonesian criminal procedural law, thereby continuing to position the expert primarily as an instrument of proof.¹⁰ Meanwhile, Simon Butt and Andreas Nathaniel, in "Evidence from Criminal Law Experts in Indonesian Criminal Trials: Usurping the Judicial Function?", examine the limits on the use of criminal law expert opinions in court, specifically the potential for experts to encroach upon judicial authority.¹¹ These three studies demonstrate that prior research has been oriented toward the expert's function as a source of evidence and their role during the trial; in contrast, the present study offers a novel perspective by examining the repositioning of the expert—starting from the investigation stage—as an independent scientific actor, and by comparing this with the conceptualization of experts in French criminal procedural law to identify a model for enhancing the objectivity and quality of criminal case investigations.

There is a vagueness of norms related to the position and independence of experts in the criminal trial process in the 2025 Criminal Procedure Code which places expert testimony as one of the evidence in criminal evidence, but does not provide clear arrangements regarding the status of experts in the judicial process. In practice, experts are often presented by interested parties, either by the public prosecutor or by the defendant through legal counsel. This condition has the potential to create the perception that experts are on the side of the party who presents it, so that it can affect the objectivity of the information provided. This lack of clarity about the position of the expert creates a vague norm regarding whether the expert should be viewed as evidence submitted by the parties or as an independent party that assists the judge in finding the material truth. Based on the above problems, the formulation of the problem in this study can be conveyed, namely 1) How is the role of experts in the examination of criminal cases in Indonesia? 2) What is the concept of expert repositioning in the examination of criminal cases with a comparison in the French criminal procedure law?

⁹ A'yun, Rafiqa Qurrata. "The Problems of Expert Witness in Criminal Law." *Indonesia Law Review* 4, no. 3 (2014): 340–357. DOI: 10.15742/ilrev.v4n3.115.

¹⁰ Kristyanti, Luh Putu. "Saksi Ahli sebagai Alat Bukti dalam Hukum Acara Pidana Indonesia." *Kertha Semaya: Journal Ilmu Hukum* 8, no. 9 (2020). DOI: 10.24843/KS.2020.v08.i09.p12.

¹¹ Butt, Simon, and Andreas Nathaniel. "Evidence from Criminal Law Experts in Indonesian Criminal Trials: Usurping the Judicial Function?" *The International Journal of Evidence & Proof* 28, no. 2 (2024): 129–153. DOI: 10.1177/13657127231217319.

2. Research Methods

This research is a type of normative legal research based on the analysis of the repositioning of expert testimony in criminal trials by comparing the provisions of the 2025 Criminal Code and the *Code de procedural pénale* in France. In the normative research paradigm, law is understood as a written norm in laws and regulations (*law in books*), or as a set of rules that are a measure of social behavior that is considered appropriate according to societal values.¹² This study uses a legislative approach, a legal concept approach and a comparative approach to examine the positive norms that govern expert examination in criminal trials. The analysis stage in normative legal research is carried out through the study of primary, secondary, and tertiary legal materials that have been collected. This study not only describes the content of the law, but also provides a critical evaluation, both in the form of support, rebuttal, and enrichment, until finally producing conclusions according to the construction of the researcher's thinking which is built on the basis of legal theories and doctrines that have been mastered.¹³ The analysis process is arranged in layers, namely descriptive, evaluative, and prescriptive to find normative answers to research issues by considering laws and regulations, theoretical concepts, legal facts, and philosophical foundations used in this research.¹⁴

3. Result and Discussion

3.1 Arrangement of the Role of Experts in the Examination of Criminal Cases in Indonesia

The development of regulations regarding the role of experts in the examination of criminal cases in Indonesia cannot be separated from the development of the evidentiary system in the criminal procedure law. In the criminal justice system, proof is a very decisive stage because through this process the judge obtains confidence about the truth of a criminal event charged against the defendant. Therefore, the evidentiary system in the criminal procedure law regulates the types of evidence that can be used and the mechanism for its use in trial. In the study of modern criminal procedural law, proof does not only rely on witness testimony, but also requires the support of scientific knowledge through expert testimony that is able to explain the technical facts in a criminal case.¹

Historically, the regulation of expert testimony in Indonesian criminal procedure law has been systematically regulated through Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP 1981) replacing the criminal procedural law system previously regulated in the *Het Herziene Inlandsch Reglement* (HIR) during the colonial period. The establishment of the 1981 Criminal Code is part of a national law reform effort aimed at creating a criminal justice system that better guarantees the protection of human rights and provides legal certainty in the criminal law enforcement process.² In the 1981 Criminal Procedure Code, expert testimony is recognized as one of the valid evidence in proving criminal cases as stipulated in Article

¹² Soekanto, S., *Introduction to Legal Research* (Jakarta: UI Press, 2017).

¹³ Ali, A., *To reveal the theory, methods and practices of normative legal research* (Jakarta: Prenada Media, 2021).

¹⁴ Ibrahim, J., *Normative legal research theory and methodology* (Malang: Bayumedia, 2018).

184 paragraph (1) of the 1981 Criminal Code. The provision states that valid evidence consists of witness statements, expert statements, letters, instructions, and statements of the defendant. The recognition of expert testimony as evidence shows that lawmakers have recognized the importance of the role of science in the process of proving criminal cases.³ In criminal justice practice, expert testimony is often used to explain various technical aspects that cannot be directly understood by judges or parties without the help of certain expertise.

In addition, the 1981 Criminal Code also regulates the obligation of a person who is asked as an expert to provide information for the benefit of the judiciary as stipulated in Article 179 of the 1981 Criminal Procedure Code. This provision emphasizes that everyone who is asked for their opinion as an expert is obliged to provide information according to his knowledge. This arrangement shows that the role of experts in the criminal justice process is seen as part of an effort to assist judges in finding the material truth in a criminal case. In the doctrine of criminal procedure law, expert testimony is understood as an opinion given by a person who has special expertise in a particular field to help the judge understand the facts related to the criminal case. Expert testimony is not based on direct experience of a criminal event, but on scientific analysis of the facts related to the case. Therefore, the use of expert testimony in the evidentiary process is a form of integration between legal science and other sciences in the criminal justice system.

Along with the development of science and technology, the role of experts in the criminal justice process is becoming increasingly important. Many modern criminal cases involve complex scientific and technical aspects, such as cybercrimes, environmental crimes, and various forms of crime involving digital technology. This condition encourages the need for reforms in the criminal procedure law system to be able to adapt to the development of society and technology. Legal research shows that the use of expert testimony is increasing in criminal justice practice because judges need scientific explanations to assess different types of evidence that are technical in nature.

The effort to reform the criminal procedure law was then realized through the establishment of the 2025 Criminal Procedure Code which replaced the previous 1981 Criminal Procedure Code. The 2025 Criminal Procedure Code aims to adapt the criminal justice system to the development of information technology and the need for a more modern proof system. In the 2025 Criminal Procedure Code, the regulation of evidence has undergone significant developments, especially with the recognition of various forms of new evidence related to technological and scientific developments.

In Article 235 paragraph (1) of the 2025 Criminal Procedure Code, expert testimony is still maintained as one of the valid evidence in criminal evidence. However, the 2025 Criminal Procedure Code expands the types of evidence by including elements of evidence, electronic evidence, and other legal evidence as long as it is obtained unlawfully. This arrangement shows the development of the evidentiary paradigm in criminal procedural law which increasingly emphasizes the importance of a scientific approach in the process of proving criminal cases. From the perspective of modern evidentiary theory, the use of expert testimony in the criminal justice process is a consequence of the development of scientific approaches in proving criminal cases. International legal research shows that expert testimony has an important role in

improving the accuracy of the evidentiary process because experts can provide a scientifically method-based analysis of the evidence presented at trial. Thus, expert testimony does not only serve as evidence, but also as a means for judges to understand technical or scientific aspects that cannot be explained without the help of certain expertise.

When viewed from its historical development, the regulation of the role of experts in the 1981 Criminal Code and the 2025 Criminal Procedure Code shows that there is continuity as well as development in the criminal proof system in Indonesia. Both laws recognize expert testimony as valid evidence in proving criminal cases. However, in the 2025 Criminal Procedure Code, the regulation regarding evidence becomes broader and adaptive to the development of modern technology and science. Thus, the history of regulation regarding the role of experts in Indonesian criminal procedure law shows that expert testimony has been seen as an important instrument in the criminal evidentiary system since its inception. The development from the 1981 Criminal Procedure Code to the 2025 Criminal Procedure Code reflects efforts to reform the criminal procedure law to adapt the evidentiary system to the development of science and the needs of modern criminal justice practice.

Arrangements regarding the provision of expert testimony in criminal cases are an important part of the evidentiary system because expert testimony serves to help judges understand the technical or scientific aspects related to a case. In the development of the modern criminal justice system, the use of expert testimony has become increasingly important along with the increasing complexity of criminal acts involving science and technology. Therefore, the regulation of the position and mechanism of expert examination in criminal procedure law must be able to ensure objectivity, independence, and legal certainty in the evidentiary process at trial. In modern evidentiary legal doctrine, experts are seen as parties who provide special knowledge to the court so that judges can understand scientific evidence that cannot be explained through ordinary witness testimony.

3.2 The Concept of Expert Repositioning in Criminal Case Examination with Comparison in French Criminal Procedure Law

In the development of the modern criminal justice system, the use of expert testimony is increasing along with the complexity of criminal acts involving science and technology, such as cybercrime, DNA forensics, and statistical analysis in criminal evidence. Therefore, the regulation of the position and the mechanism of expert examination are an important part of the modern criminal procedure law system. In the doctrine of international evidentiary law, Paul Roberts and Adrian Zuckerman explain that *expert evidence* is a special form of *opinion evidence* that is allowed in a trial because the judge or jury does not have sufficient technical knowledge to understand certain facts without expert assistance. Expert testimony in this context serves to provide an epistemic basis for judges in assessing scientific evidence submitted in criminal trials. However, the use of expert testimony also poses various challenges because the scientific methods used by experts are not always easy to understand by law enforcement officials or judges.¹⁵

¹⁵ Paul Roberts and Adrian Zuckerman, *Roberts & Zuckerman's Criminal Evidence* 3rd ed. (Oxford: Oxford University Press, 2022), 527–530.

In criminal justice practice, expert testimony is often submitted by the parties as part of an evidentiary strategy. This condition can give rise to a phenomenon known in the evidentiary legal literature as a "*battle of experts*", which is a situation when each party presents experts with conflicting opinions. According to Mike Redmayne, this phenomenon is one of the weaknesses in the modern evidentiary system because judges often face difficulties in determining which expert opinion is more trustworthy when experts use different scientific methods or come to different conclusions on the same facts.¹⁶ This problem is one of the reasons why some legal systems in continental European countries, including France, place experts as parties working for the courts. In the French criminal procedure legal system regulated in the *Code de procedural pénale*, experts are known as expert *judiciaires*, i.e. experts appointed by judges to provide technical analysis of facts related to criminal cases. The appointment of an expert by a judge is regulated in Article 156 of the *Code de procedpénale*, which gives the judge the authority to order an examination by an expert if special knowledge is needed to explain a fact in a criminal case.

In addition, Article 157 of the *Code de procedural penale* stipulates that experts appointed by judges must come from the official list of experts registered with the court. This expert list system aims to ensure the competence and independence of experts who provide opinions in the criminal justice process. Thus, experts in the French legal system are positioned as court assistants (*auxiliaire de justice*) who work independently to assist judges in understanding the technical facts related to criminal cases.

In the trial stage, the expert is usually asked to explain the examination report that he has prepared beforehand. The provisions in this regard are set out in Article 168 of the *Code de procedural pénale*, which gives the judge the authority to order the expert to give an explanation of the report before the court. In this stage, the parties are also given the opportunity to ask questions to the expert to test the accuracy and reliability of the opinion submitted by the expert. In the perspective of comparative evidentiary law, John D. Jackson explains that the legal system in continental European countries tends to place experts as court instruments tasked with helping judges find material truth, while adversarial legal systems often place experts as witnesses presented by the parties.¹⁷ This difference is related to the difference in the structure of the criminal justice system between the *inquisitorial* and *adversarial* models in the process of proving criminal cases.

In addition, the development of modern forensic science also poses new challenges in the use of expert testimony in the criminal justice process. Recent research shows that errors in the interpretation of scientific evidence can cause errors in the criminal evidence process, as known as *prosecutor's fallacy*, which is a logical error in interpreting the probability of scientific evidence presented by experts at trial. These errors can affect the judge's assessment of the evidentiary strength of a scientific evidence if it is not accompanied by a clear methodological explanation from the expert

¹⁶ Mike Redmayne, *Expert Evidence and Criminal Justice* (Oxford: Oxford University Press, 2001), 36–40.

¹⁷ John D. Jackson and Sarah J. Summers, *The Internationalisation of Criminal Evidence* (Cambridge: Cambridge University Press, 2012), 114–118.

who provided the information.¹⁸ Based on this description, it can be concluded that expert examination in criminal cases has an important role in helping judges understand technical or scientific evidence. However, the use of expert testimony also poses various challenges in the criminal evidentiary system, especially related to objectivity, independence, and scientific methods used by experts. In this case, the French legal system through the *Code de procedural penale* seeks to address this problem by placing experts as judicial assistants appointed by judges and drawn from the list of official experts. This approach aims to improve the objectivity and quality of scientific evidence in the criminal justice process.

In modern evidentiary legal doctrine, Paul Roberts and Adrian Zuckerman explain that *expert evidence* is a special form of *opinion evidence* given by someone who has special expertise to help the court understand evidence that requires technical or scientific knowledge.¹⁹ In this perspective, experts function as mediators between science and the judicial process, so that judges can assess scientific evidence rationally and can be legally accountable. In the Indonesian criminal procedure law system, the repositioning of the role of experts can be seen in the regulation of the 2025 Criminal Code which strengthens the role of science in the criminal proof system. The 2025 Criminal Code still maintains expert testimony as one of the valid evidence, but at the same time expands the concept of proof by accommodating the development of modern technology and science.²⁰ The repositioning shows a paradigm shift in the criminal evidence system that no longer relies solely on witness testimony, but also on scientific analysis provided by experts.

However, in practice, expert testimony in the Indonesian legal system is still often submitted by the parties in the trial, both by the public prosecutor and by the defendant through his legal counsel. This condition has the potential to cause a phenomenon known in the evidentiary legal literature as a "*battle of experts*", which is a situation when each party presents experts with conflicting opinions.²¹ This phenomenon can make it difficult for judges to determine which expert opinion is more trustworthy, especially if the experts use different scientific methods or come to different conclusions on the same facts. In modern evidentiary theory, this phenomenon shows the need to reposition the role of experts so that it is not solely part of the parties' evidentiary strategy, but also serves as a source of objective knowledge for the court. According to Mike Redmayne, the use of experts proposed by parties in *adversarial* systems often poses a risk of bias because experts can be perceived as siding with the party presenting them.²² Therefore, some legal systems try to balance the role of experts by giving the courts the authority to appoint independent experts.

¹⁸ Maria Cuellar, *The Prosecutor's Fallacy and Expert Testimony: A Modern Take Using Likelihood Ratios*, arXiv (2025).

¹⁹ Paul Roberts and Adrian Zuckerman, *Roberts & Zuckerman's Criminal Evidence* 3rd ed. (Oxford: Oxford University Press, 2022), 527-530.

²⁰ Nikolas Hendra Ritonga, *The Position of Evidence in the Indonesian Criminal Procedure Law Proof System*, Justitia Jurnal Hukum (2025).

²¹ Maria Ferba Editya Simanjuntak, *Analysis of the Evidentiary Strength of Expert Testimony in the Criminal Case Examination Process in Court Sessions*, Das Sollen Law Journal 8, no. 2 (2022).

²² Mike Redmayne, *Expert Evidence and Criminal Justice* (Oxford: Oxford University Press, 2001), 36-40.

This approach is clearly seen in the French criminal procedure legal system regulated in the *Code de procedural pénale*. In the French legal system, experts are known as expert *judiciaires*, which are experts appointed by judges to provide technical analysis of facts related to criminal cases. The appointment of experts by judges is regulated in Article 156 of the *Code de procedural pénale*, which gives the judge the authority to order an examination by an expert if special knowledge is needed to explain a fact in a criminal case. In addition, Article 157 of the *Code de procédure pénale* stipulates that experts appointed by judges must come from the official list of experts registered with the court. This expert list system aims to ensure the professionalism, competence, and independence of experts who provide opinions in the criminal justice process. With this mechanism, experts in the French legal system are positioned as court assistants (*auxiliaire de justice*) who work independently to assist judges in understanding the technical facts related to criminal cases.²³

In the trial stage, the expert is usually asked to explain the examination report that he has prepared beforehand. The provisions in this regard are set out in Article 168 of the *Code de procedural pénale*, which gives the judge the authority to order the expert to give an explanation of the report before the court. In this stage, the parties are also given the opportunity to ask questions to the expert to test the accuracy and reliability of the opinion submitted by the expert. In the perspective of comparative criminal procedure law, John D. Jackson explained that the legal system in continental European countries tends to place experts as court instruments tasked with helping judges find material truth, while *adversarial* legal systems more often place experts as witnesses presented by the parties.²⁴ This difference shows that there are conceptual differences regarding the position of experts in the criminal evidentiary system.

The repositioning of the role of experts in Indonesian criminal procedure law through the 2025 Criminal Procedure Code basically shows an effort to adapt the evidentiary system to the development of science and technology. However, when compared to the French legal system, the repositioning still does not fully place the expert as an independent party in the criminal justice process. Therefore, strengthening the regulation of the mechanism for appointing experts by the court as well as the standards of scientific methodology in providing expert testimony are important to improve the objectivity and quality of evidence in the Indonesian criminal justice system. In the 2025 Criminal Procedure Code, expert testimony is still recognized as one of the valid evidence in criminal evidence. However, when analyzed normatively, the regulation regarding the provision of expert testimony in the law still causes vague *norms* related to several important aspects, including the position of experts in the evidentiary system, the mechanism for appointing independent experts, and scientific methodological standards in providing expert testimony at trial.

Efforts to reconstruct the concept of providing expert testimony in Indonesian criminal procedure law through the expert repositioning approach as an independent court instrument. This research shows that the ambiguity of norms in the 2025 Criminal

²³ Jacqueline Hodgson, *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France* (Oxford: Hart Publishing, 2005), 153.

²⁴ John D. Jackson and Sarah J. Summers, *The Internationalisation of Criminal Evidence* (Cambridge: Cambridge University Press, 2012), 114-118.

Procedure Code can be overcome by clarifying the position of experts not only as evidence submitted by the parties, but also as a party that assists judges in understanding technical or scientific facts related to criminal cases. In addition, this study also offers a conceptual model for strengthening the independence of experts in the criminal justice process by referring to the practice in the French criminal procedure law system. In the legal system, experts are placed as *judicial experts* appointed by judges from the court's official list of experts. This approach suggests that experts are positioned as court assistants who work independently to assist judges in assessing evidence that is technical or scientific.

Development of an integrative approach between evidentiary theory and comparative law in analyzing the position of experts in the criminal proof system. Through this approach, this study not only identifies the ambiguity of norms in the arrangement of expert testimony, but also offers a clearer reconstruction of legal concepts regarding the role of experts in the Indonesian criminal justice system. Thus, normative problems in the regulation of providing expert testimony in the 2025 Criminal Procedure Code, but also in the formulation of the concept of expert repositioning as an independent instrument in the criminal proof process that can improve the objectivity and quality of the criminal justice process. This approach is expected to make an academic contribution to the development of Indonesian criminal procedure law and provide recommendations for regulatory reform regarding the use of expert testimony in the criminal justice process.

4. Conclusion

The effort to reform the criminal procedure law was then realized through the establishment of the 2025 Criminal Procedure Code which replaced the previous 1981 Criminal Procedure Code. The 2025 Criminal Procedure Code aims to adapt the criminal justice system to the development of information technology and the need for a more modern proof system. In the 2025 Criminal Procedure Code, the regulation of evidence has undergone significant developments, especially with the recognition of various forms of new evidence related to technological and scientific developments. In the French legal system, experts are known as expert *judiciaires*, which are experts appointed by judges to provide technical analysis of facts related to criminal cases. The appointment of experts by judges is regulated in Article 156 of the *Code de procedure pénale*, which gives the judge the authority to order an examination by an expert if special knowledge is needed to explain a fact in a criminal case. In addition, Article 157 of the *Code de procédure pénale* stipulates that experts appointed by judges must come from the official list of experts registered with the court. The repositioning of the role of experts in Indonesian criminal procedure law through the 2025 Criminal Procedure Code basically shows an effort to adapt the evidentiary system to the development of science and technology. However, when compared to the French legal system, the repositioning still does not fully place the expert as an independent party in the criminal justice process. Therefore, strengthening the regulation of the mechanism for appointing experts by the court as well as the standards of scientific methodology in providing

expert testimony are important to improve the objectivity and quality of evidence in the Indonesian criminal justice system.

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