

Problems of Criminal Law Evidence in Murder and Sexual Violence Cases (Case Study of Vina Cirebon Murder)

***Kinanti Puput Septiana¹, Beniharmoni Harefa²**

^{1,2} Universitas Pembangunan Nasional Veteran Jakarta (UPNVJ), Indonesia

*kinantipuputseptiana761@gmail.com

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Abstract

The issue of evidence in the case of murder and sexual violence against Vina in Cirebon has become an obstacle in the case resolution process. This issue can lead to errors in identity or wrongful arrests, creating legal uncertainty and reducing public trust in the justice system, thereby hindering the effective enforcement of justice. The purpose of this research is to understand the evidentiary process in law enforcement regarding the perpetrators of murder and sexual violence in this case, and to examine the responsibility of law enforcement for errors in identity caused by evidentiary problems. The research method used is normative juridical, analyzing legal sources such as laws, court decisions, legal theories, and expert opinions. The findings show that there were evidentiary issues in this case, including witness testimony, the defendant's testimony, results from the visum et repertum, and exhumation. Furthermore, the responsibility of law enforcement for errors in identity can be linked to Articles 95-97 of Law No. 8 of 1981 concerning the Criminal Procedure Code. The police, as law enforcement officers, can also be subject to sanctions under Article 7 paragraph (1) letter c of the National Police Chief Regulation No. 14 of 2011 concerning the Code of Ethics for the Indonesian National Police and Article 7 of Government Regulation No. 2 of 2003 concerning the Disciplinary Regulations for Members of the Indonesian National Police. Errors in identity in this case highlight the importance of thoroughness in the evidentiary process to ensure that justice is properly served.

Keywords: Evidence, Error in persona, Vina Case.



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INTRODUCTION

Evidence is an important component of criminal procedure law; this is confirmed in Article 6 paragraph (2) of Law Number 4 of 2004 concerning Judicial Power. Based on this explanation, proof aims as a basis for determining the judge's decision against the defendant, whether he is guilty or not based on the charges filed by the prosecutor. This was also stated by J.C.T. Simorangkir who emphasized that proof is an effort from the authorized party to convey to the judge various information related to the case, so that the information can be used by the judge as a basis for making decisions (Sofyan et al., 2014).

The foundation of evidence is evidence that is valid and relevant to a criminal case, so that the evidence provided can be used as a means of convincing the judge (Satria, 2021). The judge's belief in the system or theory of evidence can be linked based on the law negatively (*negatief wettelijk*), namely with a minimum of two valid evidences, the judge obtains a conviction (Palit, 2021). The judge can obtain confidence if the evidence submitted is in

accordance with Article 184 paragraph (1) of the Criminal Procedure Code, namely witness testimony, expert testimony, letters, instructions and testimony of the defendant.

In finding valid evidence, an evidentiary process is carried out in the investigation and examination phase by law enforcement in order to complete the judicial stage. So, the investigator in this case seeks and obtains a matter that is thought to be a criminal offense so that further investigation can be carried out. (Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Article 1 Paragraph 5).. Meanwhile, at the investigation stage, the process of collecting evidence that is able to explain a criminal offense that occurred and help identify the perpetrator can be carried out (Law of the Republic of Indonesia Number 8 of 1981 Concerning Criminal Procedure Article 1 Paragraph 2).

Evidence is often problematic when handling cases in court, especially in the process of proving murder and sexual violence cases. This occurs due to the difficulties faced by law enforcement in the disclosure or investigation process to find evidence in sexual violence cases (Paradias & Soponyono, 2022). Thus causing criminal offenses against victims of sexual violence require further investigations carried out by law enforcement to find this crucial evidence.

The case of the crime that occurred in Vina Cirebon is an example of a case in which the evidentiary process is problematic or has irregularities, especially related to investigative methods that do not use a scientific approach or *scientific crime investigation*. One of the problems is that the evidence collected by investigators is less supportive, including visum et repertum and exhumation which show different results from the initial suspicion, namely the victim of a traffic accident, as well as other irregularities, namely the finding of sperm on the victim's body even though it has been buried for 10 (ten) days (Longform, 2024). The evidence in the case of murder and sexual violence that occurred to Vina in Cirebon is also considered as an evidentiary process carried out in a hurry by the state police of the Republic of Indonesia by ignoring the aspects of the search for truth in the crime.

The murder case that occurred to the victims Vina Dewi Arsita (16 years old) and Muhammad Rizky alias Eky (16 years old) in Cirebon, West Java in 2016 attracted the attention of the Indonesian people. This case has reached the stage of the district court's verdict which was read out in 2016 and has been legally binding (inkracht), but this case has again become a conversation among the public after a movie that raised the case of murder and sexual violence that occurred to Vina. This resulted in the case becoming so viral that one of the convicts, Saka Tatal, who was sentenced to 8 years in prison, filed a judicial review to the Supreme Court. Therefore, Saka Tatal who felt that he was proven innocent or involved in the murder case that occurred to the victims Vina and Eky filed a legal remedy at the Judicial Review (PK) stage with the aim of clearing his name and submitting new evidence to the Supreme Court in Indonesia, although the judicial review received by the Supreme Court is still relatively small. However, the existence of these legal remedies explains that there are indeed problems in the evidentiary process that occur in the crime.

Problems *in* proving a criminal case can also result in an *error in persona* (wrong arrest) or an error regarding the person who is considered a suspect (Yepriadi, 2023). Whereas during the investigation process to prosecution, the defendants are protected by human dignity which is upheld in the *presumption of innocence*. Therefore, every person who is arrested, detained,

or brought before the court must be presumed innocent until there is a court decision with permanent legal force. (Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power Article 8 Paragraph 1).. *Error in persona* in a legal event can cause a person who is innocent of the crime to be forced to admit his guilt due to pressure or a series of undesirable actions, so that such errors need to be avoided by law enforcement. (Amrianto, 2023). Then, if the legal process involves the perpetrator of the *error in persona*, then it is necessary to provide responsibility to the victim of the *error in persona*.

Problems in the criminal law evidentiary process, especially in cases of murder and sexual violence such as the Vina case in Cirebon, are significant topics for further research, because they are closely related to efforts to apply the principles of justice and human rights. This is because there are many problems related to *errors in persona*, irregularities in the process of collecting evidence, and neglect of scientific investigative approaches that can potentially lead to unfair verdicts. Therefore, this research is important to be able to understand more about the evidentiary aspects that can support law enforcers in improving investigative methods to avoid fatal mistakes that can harm justice.

The research conducted by the author has similarities with previous research that examines the evidentiary process in criminal law. Research conducted by I Putu Arya et al (2021) examined the process of proof at the investigation stage against perpetrators of violent threats via telephone media. This research identified that limited evidence was the main obstacle in disclosing the case. Research conducted by Alliza Khovshov Zanuba (2023) discusses the problem of proof in a case of sexual harassment committed by a lecturer to a female student in a closed room. The absence of eyewitnesses other than the victim is a significant challenge in proving the case. Meanwhile, research conducted by Ayu Ramdani (2023) focused on the process of proof in the crime of premeditated murder and the obstacles faced by the Public Prosecutor in proving the crime. However, the research to be conducted by this author is different from the previous one because it focuses on analyzing a real case, namely murder and sexual violence in the Vina incident in Cirebon, which showed irregularities in the evidentiary process resulting in *errors in persona*. In addition, this research can serve as a practical recommendation to improve the quality of investigations and increase fairness in the implementation of the criminal justice system.

Based on this case, this research will underline the problematic of proof in criminal cases as the object of this research, so with this the author makes 2 (two) discussions related to how the process of proof in law enforcement of perpetrators of murder and sexual violence in the case of Vina's murder in Cirebon and how the responsibility of law enforcers for *errors in persona* due to problems of proof. So the author in this case wants to conduct research entitled *Problematics of Criminal Law Evidence in Cases of Murder and Sexual Violence (Case Study of the Cirebon Vina Murder)*.

RESEARCH METHODS

This research uses a type of normative legal research (Soekanto & Mamuju, 2010). The approaches used in this writing are the statutory approach and the case study approach (Waluyo, 1996). This approach was chosen to analyze in depth the issues raised by the author relating to the problematics of criminal evidence in the Vina case in Cirebon. Thus, later this research can

produce a comprehensive understanding and become a practical recommendation to improve the quality of criminal law evidence.

The data sources used are divided into 3 namely primary, secondary and tertiary data. Primary data used relates to various laws including the 1945 Constitution, Criminal Code, Law No. 8 of 1981 on Criminal Procedure, Law No. 48 of 2000 on amendments to Law No. 4 of 2004 on Judicial Power and Law No. 11 of 2012 on the Juvenile Criminal Justice System. These laws and regulations were chosen as the legal provisions used in this discussion. Meanwhile, secondary data used includes official documents such as court decisions, investigation reports, *visum et repertum* results, and other relevant documents. In addition to legal documents, media articles and investigative coverage of the case were also used as tertiary data sources to add dimension to the analysis (Pasek, 2016).

The author's data collection techniques through the documentation process included collecting court decisions, investigation reports, and post mortem results through official requests to relevant agencies and searching public archives. In addition, media analysis was conducted to identify public perspectives and the dynamics of information circulating related to the Vina case. After the data collection process, the author in this case analyzes the data using descriptive-qualitative methods through the process of collecting, filtering, presenting data and drawing conclusions (Ahmad et al., 2024). This analysis focuses on identifying patterns of evidentiary irregularities, *errors in persona* that occur, and developing recommendations to improve the fairness and quality of investigations. Thus, with the data analysis that is well applied, this research can be a learning material regarding criminal law evidence in Indonesia, especially in cases of murder and sexual violence in the Vina case in Cirebon.

RESULTS AND DISCUSSION

The Evidentiary Process in Law Enforcement of Perpetrators of Murder and Sexual Violence in the Case of Vina's Murder in Cirebon

Evidence has a crucial role in deciding whether an event that has occurred constitutes a crime, as well as who can be considered as a defendant in the event, then in this context must be responsible for his actions (Prints, 1989). In this case, the investigator is responsible for finding and collecting evidence that can explain the criminal offense (Krisnalita & Wigrhalia, 2020). So in the process of collecting evidence can be obtained through *locus* and *tempus delicti*. In the context of evidence, *locus delicti* is related to instrument theory, referring to the place where the crime occurred can function as a tool or means that can influence or prove legal events, while *tempus delicti* in the context of evidence can provide a basis for judges to assess the validity of evidence and determine whether the action has fulfilled the elements of the crime charged (Harefa & Kholiq, 2024). So that if a criminal offense can be clearly found *locus* and *tempus delicti*, then this can help investigators in collecting evidence in accordance with Article 184 of the Criminal Procedure Code, and the evidence that has been found can be submitted to the public prosecutor so that the judicial process is carried out in accordance with what has been proven.

However, in practice, the evidentiary process, including the law enforcement process in resolving criminal cases, is one of the biggest challenges in law enforcement to be able to decide cases fairly for all litigants (Bagaskoro et al., 2023). One of the criminal cases that has evidentiary problems is the case of murder and sexual violence that occurred to Vina in Cirebon.

Initially, the death of Vina and Eky was a death due to a traffic accident, but after the exhumation of both of them and the results of the *visum et repertum* stated that Vina was raped before being found dead. The *visum et repertum* was then used as preliminary evidence in the judicial process of the case.

Based on the results of the *visum et repertum* and supported by several other evidence, the police named 8 (eight) suspects including Jaya alias Kliwon (23 years old), Supriyanto alias Kasdul (20 years old), Eka Sandi alias Tiwul (24 years old), Hadi Saputra alias Bolang (23 years old), Eko Ramadhani alias Koplak (27 years old), Sudirman (21 years old), Rivaldi Aditya Wardana alias Ucil (21 years old), and Saka Tatal (15 years old). However, the passage of time followed by this case which went viral again on social media due to the broadcast of a feature film that raised this case. It raises several irregularities so that in this study the author focuses his research on the evidentiary process carried out in the settlement of the criminal case.

The irregularities at the evidentiary stage carried out during the settlement of the case that occurred to Vina and Eky in Cirebon are first found in witness testimony. Witness testimony is testimony given about a criminal event that he himself heard, saw and experienced directly, accompanied by reasons and knowledge (Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Article 1 Paragraph 27). Several provisions need to be fulfilled as a witness in order to have evidentiary power, which must be pronounced under oath or promise, testimony that has value as evidence is a statement that has direct knowledge of an event or fact related to the case, testimony must be presented at a court hearing, witness testimony alone is not considered sufficient so that it must be fulfilled at least 2 (two) other evidence, the testimony of several witnesses is not allowed to stand alone without any connection with each other (Bakhri, 2009).

In this case the prosecution presented 26 witnesses, but only 3 of them testified that they saw the alleged maltreatment. The testimony of these 26 witnesses cannot be said to be independent witness testimony because in this context witness testimony must be related to one another, but some witnesses confirmed or refuted previous testimony in court. Thus, this creates complexity in understanding the facts contained in this case. One of the witness statements that directly saw and denied the alleged traffic accident was the witness statement given by Rana Als Mang Piyong on Saturday, August 27, 2016 at around 22.45 WIB who stated that he witnessed a man who was riding a motorcycle being ganged up on by 2 (two) men riding a motorcycle as well, and in his statement he also saw a woman suspected of being Vina standing on the sidewalk at the Talun flyover (Decision Number 3/Pid.B/2017/PN Cbn, 2017a). Based on the witness testimony that has been given, there are irregularities in terms of the location and time of the incident which does not match the indictment in the decision which explains that at 22.30 WIB the victim's body was found on the flyover.

Then the provisions that must be fulfilled as a witness in order to have evidentiary value, one of which is that he must say an oath or promise and the testimony is delivered in court. However, in this case the testimony given by Aep and Dede Riswanto as a witness who testified that he saw the alleged persecution that caused this death was only given through the BAP and was not given during the trial in court, on the grounds that the address of the two witnesses was no longer known. However, their testimony was still read out in court, based on Article 162 paragraph (2) of Law No. 8 of 1981 concerning Criminal Procedure, so that the nature of the

evidence is considered equivalent to testimony given under oath during the trial process (Bakhri, 2009).

However, the witness testimony given by Aep and Dede Riswanto also has irregularities, namely related to the distance at which he stood and saw the incident, where according to the results of research or crime scene processing conducted by Dedi Mulyadi, the distance at which the two witnesses stood was around 150 meters, not 50 meters as stated in the court decision. So according to Dedi Mulyadi, logically at that distance without adequate lighting, he could see a group of people chasing, throwing and memorizing the motorbike, its color and type and memorizing the name of the person (Detik Jabar, 2024). Therefore, other evidence is needed to make the crime clear, this is due to the irregularities and differences in witness testimony from one another.

Evidence that has other irregularities is related to letter evidence, namely from the results of the *visum et repertum* and exhumation and the results of data extraction on Mega's cellphone. Letter evidence when viewed from the point of view of its evidentiary power is divided into 2 (two) things, namely formally as complete evidence and materially which has binding force, but the final assessment is given to the judge who has the freedom to evaluate its strength and truth (Harahap, 2006). However, the results of the *visum et repertum* and exhumation conducted after 10 (ten) days of burial are considered to have irregularities, this is because no stab wounds were found on the victim Eky as explained in the indictment of the verdict that the perpetrator used a short samurai on the left side of the abdomen once, which resulted in the victim dying at the scene (Decision Number 3/Pid.B/2017/PN Cbn, 2017b). While the exhumation results on Vina's grave were carried out after 10 days after death, so that the sperm found were damaged and difficult to identify, this was stated by several experts who explained that sperm can only live for three to five days maximum (Yuni Priskila Ginting et al., 2023).

Witness statements from Mega and Widi who stated that they had communicated 15 minutes before the victim was found dead on the flyover, or around 22.14 WIB, which in the results of data extraction on Vina's cellphone showed that she had asked about Mega's whereabouts (Official iNews, 2024). Then in the testimony of witnesses Mega and Widi also testified that he did not see any irregularities caused by rape and scars when accompanying Vina at the hospital (Sutriyanto, 2024). However, according to the law of criminal procedure, this cannot show accurate proof of the alleged murder or suspected traffic accident. However, it can help the judge in obtaining the judge's confidence in the trial process.

The differences in evidence contained in this case are what causes problems of evidence related to the scientific approach or *scientific crime investigation* (SCI). This was also said by the National Police Chief General Listyo Sigit Prabowo who stated that the investigation in the Vina and Eky cases was not fully based on the scientific approach or SCI (Rahmawati, 2024). The lack of application of the scientific approach or SCI method in the investigation of this case is one of the main factors that raises doubts about the validity of the evidentiary process. Then, this problem makes the justice system weak because the legal process is not running efficiently. This is emphasized by the delay in the resolution of the case, as well as the lack of investigators in finding new facts or evidence that might lead to misconduct. So, in this case, the inability of investigators and prosecutors to present irrefutable evidence will result in unfair law enforcement against the suspect (Budianto et al., 2024). Thus, this can affect public confidence

in law enforcement, because the law enforcement process can be influenced by the method of proof that will be used in the case (Riswan, 2023).

Law Enforcement Responsibility for Error in Persona Due to Evidentiary Problems

The criminal law enforcement process in Indonesia goes through several main stages that are adjusted in Law Number 8 of 1981 concerning Criminal Procedure Law. In practice, the legal process carried out by law enforcement officials can make mistakes, one form of error is *error in persona* or error in identifying the actual perpetrator of a criminal offense (Yepriadi, 2023). *Error in persona* can be caused by negligence of law enforcers in complying with applicable rules, such as unauthorized collection of evidence or manipulation in the investigation process or violation of Article 18 paragraph (1) of the Criminal Procedure Code which requires investigators to show an arrest warrant (Utomo, 2023). The non-compliance of law enforcers results in unlawful arrests and potentially violates the principle of presumption of innocence as stipulated in Article 8 paragraph (1) of Law Number 48/2009 on Judicial Power (Prodjomidjojo, 1984).

Some of the factors that lead to victims of wrongful arrest include misidentification, inaccurate evidence, or non-standard law enforcement procedures (Arisma et al., 2024). Based on this, police investigators can be said to be unprofessional and violate the police professional code of ethics in terms of ignoring applicable legal procedures and norms (Christian, 2023). This is adjusted to Article 7 paragraph (1) letter c of the National Police Chief Regulation Number 14 of 2011 concerning the Professional Code of Ethics of the Indonesian National Police which states that "Every member of the National Police must carry out their duties professionally, proportionally, and procedurally". So, this also affects the social perspective related to *errors in persona*, which can harm the good name of victims of wrongful arrest, cause psychological trauma, and harm the affected family (Efendi & Pancaningrum, 2021). In addition, this error also violates the individual's right to be free from degrading treatment, and creates public distrust of law enforcement officials (Prabandani et al., 2024).

One example of an arrest case or *error in persona*, which happened to Saka Tatal, stems from a murder incident involving the victims Vina and Eky in 2016. At that time, Saka Tatal was 16 years old and was later accused of being involved in the beating that resulted in the death of the victim Eky. During the legal process, the defendant Saka Tatal and several other defendants explained that they had no involvement in the incident and stated that they were victims of a law enforcement error.

Investigators in this case did not use a *scientific crime investigation* approach to ensure that every step of the investigation was based on verified facts, and the case was also exacerbated by the use of non-scientific methods such as coercing confessions or assumptions based on weak evidence (Helmi, 2024). This was also influenced by the public pressure that followed the law enforcement process in this murder and sexual violence case. This public pressure causes the police to immediately find the perpetrator and this affects the way the investigation is carried out, as well as the stigma circulating in the social environment related to motorcycle gangs and violence among teenagers can affect people's perceptions of this case (Suryani, 2024). There were also many legal experts who considered that the legal process was not transparent and showed manipulation in the collection of evidence, such as false testimony given by witnesses Aep and Dede, unclear physical evidence submitted, intimidation of

suspects, intervention by authorities including the parents of the victim Eky who had a position in the police, which influenced the legal process and was supported by the removal of two names from the Wanted List (DPO).

Thus, the mistakes made by the police are caused by the negligence of investigators when carrying out their duties related to the abuse of their authority during the investigation process, as well as the non-compliance of police members with disciplinary regulations in carrying out their duties. So if members of the police violate this, they can be legally processed through a code of ethics hearing by imposing administrative sanctions and the general court for imposing criminal sanctions (Wahyuni, 2023). In this context, for members of the National Police who violate the provisions of the service, they can be subject to Article 7 of Government Regulation Number 2 of 2003 concerning Disciplinary Regulations for Members of the Indonesian National Police, which can be subject to sanctions in the form of disciplinary actions, or disciplinary penalties adjusted in Article 9, including written warnings, postponement of attending education for a maximum of 1 (one) year, postponement of periodic salary increases, postponement of promotion for a maximum of 1 (one) year, release from office, and placement in a special place for a maximum of 21 (twenty-one) years. So, if in the process of investigation, members of the Police make mistakes that violate the laws and regulations, they can be sentenced.

The act of arrest carried out by the Police can also be considered a violation of human rights, because it deprives a person of their freedom and violates the right to be free from torture and degrading treatment as adjusted in Article 28G paragraph (2) of the 1945 Constitution. This is confirmed by the suspect's confession that he was tortured, beaten, drugged and forced to confess. This problem clearly violates human rights both regulated in national law and international law. Then the human right not to be tortured is also protected in the *International Covenant on Civil and Political Rights* (ICCPR) in Article 7 which explains that "No one shall be compelled to work or be subjected to torture or to cruel, inhuman or degrading treatment." In addition, the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) which has been ratified by Indonesia, so in this case provides protection against torture as well as the state's obligation to prevent and investigate torture committed by state officials (Arnya, 2023).

The treatment carried out by the investigator is regulated in Article 351 of the Criminal Code relating to persecution, and if it is carried out on a child as a suspect, then this is a form of violation of Article 64 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In this legal process, investigators should have more respect for human rights, especially in terms of equality before the law and legal protection without discrimination. So that if this has occurred, the responsibility of the investigator in the context of *error in persona* can be adjusted to Article 95 of the Criminal Procedure Code which explains that suspects, defendants, or convicts have the right to claim compensation if they are arrested, detained, prosecuted, or tried without valid reasons according to law, or because of misidentification or application of the law (Asnawi 2024). In addition, victims are also entitled to rehabilitation based on the provisions of Article 97 of the Criminal Procedure Code. (Safitri, 2024). Then this is also reinforced in Article 1 paragraph 22 of the Criminal Procedure Code regarding

compensation due to errors related to identity or application of the law in accordance with the rules set out in the law.

The legal protection provided by the state is a responsibility and obligation towards victims of *error in persona* to respect, maintain and improve human rights as regulated in legislation (Hermanto, Bunyamin, and Nurjanah 2024). In this context, it is related to Law Number 31 of 2014 concerning the protection of witnesses and victims to obtain protection from threats, the right to legal assistance, the right to obtain compensation, restitution, and rehabilitation (Arifin, Santoso, and Arsyad 2024). Thus, aggrieved victims of wrongful arrest have the right to file legal action through pretrial if the case has not yet entered the main trial. However, if the case has been tried, the victim can request compensation and rehabilitation within 3 (three) months after the verdict is legally binding, and can also apply for a judicial review to clear his/her name (Nainatun et al., 2024).

CONCLUSION

Evidentiary problems that occur in the process of investigation and investigation can hamper the course of the justice system. This is evident from the Vina case in Cirebon which had evidentiary problems related to the results of the *visum et repertum* and exhumation which stated different results from the initial suspicion of death, namely a traffic accident, and turned into allegations of sexual violence that occurred before the discovery of death. Meanwhile, other problems were also caused by the limited evidence and witnesses that could shed light on the trial, investigators in carrying out their duties did not use a scientific approach or scientific crime investigation (SCI), the absence of stab wounds on the victim Eky which were adjusted to the charges in the decision. Thus, this can make the justice system weak because the legal process is not running effectively.

As a result of the problem of proof in the process of resolving criminal cases, it can affect the existence of errors in determining suspects or errors in *persona* in the criminal justice system. Investigators as law enforcers in this context can be held responsible for the fulfillment of the legal rights of victims of error in *persona*. In this context, it is also a violation of human rights because it treats violence in the investigation process, in this case investigators as law enforcers should be able to respect human rights on equality before the law without discrimination against equal protection of the law. Then, the responsibility given by the government can be adjusted to Article 95 of the Criminal Procedure Code and Article 97 of the Criminal Procedure Code and supported by Law No. 31 of 2014 concerning witness and victim protection.

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