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The Juridical Review of Legal Position of Witness *Testimonium De Auditu* in the Criminal Justice System

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Abstract.
The purpose of this research is to find out the Position of the Witness Testimonium De Auditu in the Criminal Justice System and to know the trength of evidence of witness Testimonium de Auditu as evidence in criminal procedural law. Sthe specification of this research is normative juridical. The results of this study indicate thatThe existence (existence) of witness Testimonium de Auditu related to the strength of evidence in criminal cases in Indonesia, both before and after the decision Number MK 65/PUU-VIII/2010 does not have binding legal force on the judge's consideration in deciding a criminal case in Indonesia. Legal standing, the strength of proving witness testimony, Testimonium de Auditu or hearsay evidence as valid evidence after the Constitutional Court Decision Number: 65/PUU-VIII/2010 so that it can be applied more effectively in the process of investigation, prosecution and trial, an indication of reliable reliability is needed sufficient, has binding legal force and contains fair considerations. There are still many differences in the views of the judges in giving their considerations regarding the evidence of witness Testimonium de Auditu, so that this does not provide legal certainty to the position of witness Testimonium de Auditu.
Keywords: Review; Criminal; Testimony; Witness.

1. Introduction

In imposing criminal penalties in criminal justice, there are at least two pieces of evidence that are valid according to the law in accordance with Article 184 paragraph (1) of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code). The most important evidence in criminal law is witnesses. In the examination of criminal cases at trial, the main evidence is the testimony of witnesses.[1]Witnesses are in first place in terms of the strength of their evidence, this is because in committing a crime the perpetrator always tries to eliminate the tools used to commit the crime, so that witness testimony is needed around the crime scene.[2] The witness in giving testimony before the trial must also be seen from several aspects when his testimony is heard, namely the subjectivity of the witness where the witness is already under oath in giving testimony before the trial, then also look at the material or substance of the testimony heard in the trial and the delivery mechanism where witness testimony will only be assessed if it is stated or heard in court.[3]

Criminal courts in Indonesia provide special requirements for summoning witnesses, where witnesses must hear for themselves, see for themselves, or experience for themselves the events related to the criminal matter being tried. The testimony of a witness does not have to be about all events, as long as he has seen it

[1]Tiovany A. Kawengian, Peranan Keterangan Saksi Sebagai Salah Satu Alat Bukti Dalam Proses Pidana Menurut Kuhap, Jurnal Lex Privatum, Vol. IV/No. 4/Apr/2016, p. 30.
[2]Mahrus Ali, (2011), *Dasar-dasar Hukum Pidana,* Sinar Grafika, Yogyakarta, p. 31.
[3]R.Subekti, (2007), *Hukum Pembuktian*, Cetakan Ke-16, Pradnya Paramita, Jakarta, p. 19.

himself, heard it himself, or experienced it himself, that person can be called as a witness.[4]In the case of witnesses who do not hear, see, or experience the incident themselves, in criminal law they are known as *de auditu* witnesses where the testimony given before the trial by the witness is obtained from information obtained from other people.[5]A *de auditu* witness is a testimony from someone before a court to prove the truth of a fact, but the witness does not experience/hear/see the fact for himself, he only hears it from the statements of others.[6]

This *Testimonium de Auditu* has long been known in various legal systems in the world, the concept of *Testimonium de Auditu* is basically not recognized for its strength as full evidence, both in the continental European legal system and the Anglo Saxon legal system, although in the Anglo Saxon legal system this legal system is recognized for its existence in the legal system. The Criminal Procedure Code itself explains in the explanation of Article 185 Paragraph (1) that the testimony of witnesses does not include information obtained from other people or *Testimonium de Auditu*.

The Constitutional Court in its Decision Number 65/PUU-VIII/2010 is of the opinion that the witness's testimony is a statement that has relevance to the criminal case being litigated. The judge was of the opinion that the notion of a favorable witness in Article 65 of the Criminal Procedure Code cannot be interpreted narrowly by referring to Article 1 number 26 and number 27 of the Criminal Procedure Code only. The definition of witness as stated in Article 1 number 26 and number 27 of the Criminal Procedure Code provides restrictions and even eliminates the opportunity for a suspect or defendant to present a witness that is favorable to him because the phrase "he heard himself, he saw and experienced it himself" requires that only the witness hears himself, see for yourself, and experience for yourself an act/criminal act that can be submitted as a favorable witness. After the Constitutional Court issued its decision number 65/PUU-VIII/2010 in 2011, the decision confirmed that the de auditu witness was recognized as a witness and became valid as witness evidence or not. The power of proving de auditu witnesses also changed due to the expansion of the meaning of witness by the Constitutional Court which at first was fixated on the phrase he heard himself, he saw for himself, and he experienced it himself was changed to a testimony that he did not always hear himself, he saw for himself, and he experienced it himself as long as the testimony of the witness has relevance to the case and can make the case at hand clear.

After the issuance of the Constitutional Court's decision No. 65/PUU-VIII/2010 which has implications for the expansion of the meaning of the witness, so that the de auditu witness can be presented and heard by the judge at trial. 1. The function of the testimony of a de auditu witness in the evidentiary law in Indonesia, in principle, in Indonesian law, the testimony of a de auditu witness does not have the power as witness evidence, both in civil proceedings and in criminal proceedings.

[4]Leden Marpaung, (2009), *Proses Penegakan Perkara Pidana (Penyelidikan & Penyidikan),* Sinar Grafika, Jakarta, p. 83-84
[5]Ibid.
[6]Munir Fuady, (2006), *Teori Hukum Pembuktian (Pidana dan Perdata),* PT.Citra Aditya Bakti, Bandung, p.132

However, in general it can also be said that the testimony of the de auditu witness can actually be direct evidence (in civil proceedings) and evidence of suspicion in civil proceedings or evidence of instructions in criminal procedural law.

The context of proving an allegation or indictment is not only to prove whether the suspect or defendant has committed or is involved in certain criminal acts/actions; but also includes proving that an act/criminal act has actually occurred. In the context of proving whether an act/criminal act actually occurred; and proof of whether the suspect or defendant actually committed or was involved in the said of crime. The role of the alibi witness becomes important, even though he does not hear himself, he does not see himself, and he does not personally experience any crime/crime committed by the suspect or defendant.

In another case, the decision of the Constitutional Court Number 65/PUU-VIII/2010 which affirmed the recognition of the testimony of de auditu witnesses was not applied. This can be seen in the prosecutor's claim with decision number 493 K/Pid/2014 where the basis for submitting an appeal by the prosecutor is because the judex facti ignores the testimony of the de auditu witness in the sense that the judge does not consider the testimony of the de auditu witness in the decision.Bulukumba District Court Number: 84/Pid.B/2013/PN.BLK where the defendant was acquitted on the alleged crime of beating Article 170 paragraph (1) of the Criminal Code. Based on the decision, based on the Decree of the Minister of Justice No. M.14.PN.07.03 of 1983 concerning Additional Guidelines for Implementing the Criminal Procedure Code point 19, the attachment reads: "that an acquittal cannot be appealed, but based on the situation and conditions, for the sake of law, justice and truth, an acquittal may be requested..Even though in the end the Cassation filed by the prosecutor with the case number493 K/Pid/2014 the defendant has been found guilty, but on the basis of a judex factie error in deciding the defendant's acquittal and not considering the witness *Testimonium de Auditu* has created confusion about where the position of witness de auditu's testimony in the criminal procedural law system.

The aim to be achieved in this research is to find out the Position of Witness *Testimonium De Auditu* in the Criminal Justice System; and to know the trength of evidence of witness *Testimonium de Auditu* as evidence in criminal procedural law.

2. Research Methods

The specification of this research was normative juridical, the method used in this research was descriptive analysis. The data used were primary data and secondary data, using data collection with interviews and literature study, qualitative data analysis, problems analyzed by theory, law enforcement and legal certainty.

3. Results and Discussion

3.1. The position of the witness of *testimonium de auditu* in the criminal justice system

The practice of criminal justice in Indonesia, the submission of witness *Testimonium de Auditu* aimed at proving a criminal case, is based on certain conditions, namely as follows:

- a criminal incident.
- there are no witnesses who see, hear and know a criminal event that occurred, there are only victims and defendant witnesses.

The things mentioned above certainly aim that the defendant is not free from his responsibility as the perpetrator of a criminal act. Besides that, in order to facilitate the evidentiary process so that a case does not drag on its settlement in a trial in court. In the practice of the judiciary in Indonesia, the treatment of witnesses testimonialum de auditu, including:

- Several court decisions that use the testimony of *Testimonium de Auditu* as evidence of suspicion (civil) or evidence of instructions (criminal). The author strongly supports the court's attitude like this, provided that the judge has reasonable reasons for it, such as the reason that the testimony of the witness *Testimonium de Auditu* deserves to be treated as an exception such as the Decision of the Supreme Court of the Republic of Indonesia No. 308/K/Sip/1959 dated November 11, 1959, which states as follows: "The *Testimonium de Auditu* cannot be used as direct evidence, but this testimony can be used as evidence of an allegation, from which one thing or fact can be proven. This is not prohibited."[7]
- The Supreme Court's decision Number: 2179/K/Pid.Sus/2009 which involved the defendant Sulaeman in a criminal case by deliberately threatening violence forcing a child to have sex with him several times and having intercourse in such a way that it must be seen as a continuing act. Witness de auditu proposed by the public prosecutor (witness Muhamad Nur, witness Sumarni and witness Jumriana). The judge stated that the defendant Sulaeman was legally and convincingly guilty.
- After the examination of the witness *Testimonium de Auditu* in the case of the defendant Sulaeman. The same consideration also occurred in the Supreme Court Decision Number 1348/K/Pid/2005 which involved the defendant Adrian Herling Woworuntu in a corruption case. The judge considers the testimony received from others or the *Testimonium de Auditu* as evidence.

In the practice of judicial development in Indonesia, the witnesses regulated in the Criminal Procedure Code are expanded based on the Constitutional Court Decision Number: 65/PUU-VIII/2010. Defining the definition of a witness does not mean that a person who can provide information in the context of an investigation, prosecution and trial does not always hear himself, he sees it for himself and he experiences it himself, judging by the decision, that witness testimony does not only have to be seen, heard and experienced. The treatment of witness *Testimonium de Auditu* after the decision of the Constitutional Court Number. 65/PUU-VIII/2010.

[7]Munir Fuady. Ibid, p. 148-149.

The author found the fact that the application of the testimony of the witness *Testimonium de Auditu*, which is clearly not regulated in the provisions of the Criminal Procedure Code, found that there were decisions of the Supreme Court and the decisions of the lower courts which had permanent legal force which considered the testimony of the witness *Testimonium de Auditu* as evidence in the trial, while after the decision of the Constitutional Court Number : 65/PUU-VIII/2010 when the testimony of the witness *Testimonium de Auditu* was acknowledged as evidence of the testimony of the witness, there was a decision of the Supreme Court that did not consider the testimony of de auditu as evidence of the testimony of the witness. The difference between the decisions of the Supreme Court and the lower courts in responding to witness *Testimonium de Auditu* requires regulations that can solve the existence of witness *Testimonium de Auditu* related to the strength of evidence as evidence for witness testimony in Indonesia, so that it can be applied effectively in the process of investigation, prosecution and trial.

The concept of *Testimonium de Auditu* or hearsay is a testimony from someone in a trial to prove an action or event but the witness did not experience or hear or even see the incident. In other words, as a third party who only heard it from other people, the hearsay can also be said as indirect testimony.[8]

In terms of formal criminal law, it does not regulate witness *Testimonium de Auditu* who receives information from witnesses who have seen, heard, and experienced the occurrence of a criminal event (indirect testimony). So the witness *Testimonium de Auditu* is considered non-existent. As expert opinion, Andi Hamzah in his book entitled Indonesian Criminal Procedure Code, states that "de auditu testimony is not allowed as evidence, and is also in line with the objectives of criminal procedure law, namely seeking material truth, and for the protection of human rights, where the testimony of a witness who only heard from others, the truth is not guaranteed".

Article 185 paragraph (1) of the Criminal Procedure Code states that "witness testimony as evidence is something that must be stated in court. Furthermore, in his explanation, it is emphasized that the witness testimony does not include information obtained from other people or *Testimonium de Auditu*". However, in practice the witness *Testimonium de Auditu* is actually used and has evidentiary value as stated in the Decision of the Supreme Court of the Republic of Indonesia Number: 308/K/Sip/1959 dated November 11, 1959, Decision of the Supreme Court Number: 2179/K/Pid.Sus/ 2009, and Supreme Court Decision Number 1348/K/Pid/2005. The existence of *Testimonium de Auditu*, although it is not included in the term formal criminal law, but in practice it is used and the strength of proof is recognized in the KUHAP system which is based on the conception of the protection of human rights.

The meaning of witness has expanded after the Constitutional Court's Decision Number 65/PUU-VIII/2010, in other words, the concept of formulating the decision is in accordance with the criteria and the concept of *Testimonium de Auditu*, which does not always see it yourself, hear it yourself, and experience the occurrence of a criminal event first-hand, indirect testimony). However, this was not taken into

[8] https://ngefordig.wordpress.com/2017/01/16/konsep-hearsay-dalam-bukti-digital/, accessed on July 21, 2022

consideration (not applied) to the Supreme Court's decision Number: 1469/K/Pid.Sus/2011, Sukadana District Court Decision Number: 69/K/Pid.B/2014/PN.SDN, and the Decision Biak District Court Number: 10/K/Pid.b/2016/PN Bik.

Whereas the two conditions mentioned above are related to the legal theory of evidence adopted in Indonesia, namely negative proof *wettelik bewijstheorie* or negative evidence based on law, is proof that in addition to using the evidence contained in the law, also uses the judge's conviction. So based on the author's research, the strength of the evidence of witness *Testimonium de Auditu* in a case, is based on the judge's considerations and/or beliefs. That is where the function of the judge as a court is to position his conscience and belief, so that anyone who has a litigation will be judged fairly. Each judge is given the freedom to examine, hear and decide a case that cannot be intervened by anyone. However,

Based on the author's research regarding the existence (existence) of witness *Testimonium de Auditu* related to the strength of the evidence associated with the views of criminal law experts in Indonesia, as well as legal theory of evidence in criminal cases in Indonesia, both before and after the decision of the Constitutional Court Number: 65/PUU-VIII/2010 does not have binding legal force on the judge's consideration in deciding a criminal case in Indonesia.

3.2. The strength of proof of witness testimony *testimonium de audit*um as evidence in criminal procedural law.

The decision of the Constitutional Court Number: 65/PUU-VIII/2010 related to the judicial review proposed by Prof. Dr. Yusril Ihza Mahendra regarding the examination of Article 1 number 26 and number 27 in conjunction with Article 65 in conjunction with Article 116 paragraph (3) and paragraph (4) in conjunction with Article 184 paragraph (1) letter a of Act No. 8 of 1981 concerning Criminal Procedure Code (KUHAP) against Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution. The Constitutional Court is in consideration of reviewing Article 1 number 26 and number 27 of the Criminal Procedure Code regarding the submission of witnesses in favor of Prof. Dr. Yusril Ihza Mahendra as a suspect was rejected by the AGO investigators in the corruption case of access fees and Non-Tax State Revenue (PNBP) fees in the Legal Entity Administration System *(Sisminbakum*) of the Indonesian Ministry of Law and Human Rights.

The decision of the Constitutional Court Number: 65/PUU-VIII/2010, states that Article 1 number 26 and number 27; Article 65; Article 116 paragraph (3) and paragraph (4); and Article 184 paragraph (1) letter a of Act No. 8 of 1981 concerning Criminal Procedure Code (State Gazette of the Republic of Indonesia of 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as the witness is understood in Article 1 number 26 and number 27; Article 65; Article 116 paragraph (3) and paragraph (4); Article 184 paragraph (1) letter a of Act No. 8 of 1981 concerning Criminal Procedure Code (State Gazette of the Republic of Indonesia of 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209),

Whereas the Constitutional Court's Decision Number: 65/PUU-VIII/2010 states the meaning of witness is "a person who can provide information in the context of investigation, prosecution, and trial of a criminal act which he does not always hear himself, he sees for himself and he experiences himself", is related to with the concept of "testimonium de auditu is a statement or witness statement based only on what is heard from the other party. Testimonium de auditu means that the information given by the witness is not a statement that originates from events or events that are heard, seen or experienced themselves.

In connection with this decision of the Constitutional Court, the definition of witness *Testimonium de Auditu* confirms that witness *Testimonium de Auditu* has the criteria and concepts regulated in the Constitutional Court Decision Number: 65/PUU-VIII/2010, namely the testimony or statement of the witness is only based on what is heard from the other party (he doesn't always hear it himself, he sees it for himself and he experiences it himself). In other words, witness *Testimonium de Auditu* is included in the term of formal criminal law and its existence is recognized by the Constitutional Court. Where the witness *Testimonium de Auditu* (he doesn't always hear it himself, he saw it himself and he experienced it himself) can be used for witnesses who incriminate the suspect/defendant and can be used to relieve or benefit the suspect/defendant.

Furthermore, in the explanation of Article 185 paragraph (1) it is stated that what is meant by witness testimony as evidence is that witness statements must be stated in the trial process. If it is related to Article 185 paragraph (1) of the Criminal Procedure Code with the rules of the Constitutional Court Decision Number: 65/PUU-VIII/2010, then the testimony of a witness as evidence is a person who can provide information in the context of investigation, prosecution and trial of a criminal event that is not always he hears himself, he does not always see it himself and he does not always experience it himself by mentioning the reasons for his knowledge and must be stated in the trial process.

The description above, according to the author's analysis, proves that the testimony of the witness *Testimonium de Auditu* (indirect testimony) has legal standing after the decision of the Constitutional Court Number: 65/PUU-VIII/2010 concerning the expansion of the meaning of witnesses acting as evidence of legal witness statements in criminal cases and is included in the term of criminal procedural law in Indonesia. The Constitutional Court is the highest judicial institution that has the authority to judicial review or judicial review of the 1945 Constitution.The Constitutional Court's decision is *erga omnes* which means, the Constitutional Court's decision applies general andthe result of the decision is final and binding there is no other legal remedy, related to the existence of witness *Testimonium de Auditu* who has legal standing after the decision of the Constitutional Court Number: 65/PUU-VIII/2010 as evidence of witness testimony, then the judiciary below should consider the strength of evidence from witness testimony *Testimonium de Auditu* as evidence of witness testimony in criminal cases in Indonesia.

In fact, the testimony of the witness *Testimonium de Auditu* as evidence of witness testimony after the Constitutional Court Decision Number: 65/PUU-VIII/2010 which was used to incriminate the defendant in proving criminal cases in court, it was found that there were still decisions of the Supreme Court and the lower

courts which had permanent legal force. BHT), there are those who do not consider the strength of the evidence of witness *Testimonium de Auditu* as evidence of witness testimony. From the decision above, it can be seen that the Supreme Court of the Republic of Indonesia and the Judiciary below it have not said one word in considering the strength of the witness *Testimonium de Auditu* as evidence of witness testimony.

The Supreme Court and the lower courts are inconsistent with the decision of the Constitutional Court Number: 65/PUU-VIII/2010 regarding the strength of evidence of witness testimony, testimonialum de auditu as evidence for witness testimony in criminal cases, referring to the principle of the ratio decidendi, namely the judge's legal considerations so that the decision is respected and respected by the community, especially justice seekers, the decision handed down must contain solid and clear considerations. The considerations must contain basic reasons, namely rational, actual, and contain human values and propriety. Judges of the Supreme Court and the lower courts may not be discriminatory, both in terms of class and social status.

According to the author, the decisions of the Supreme Court and the Judiciary below which are inconsistent in considering the strength of the evidence of witness testimony, testimonialum de auditu as evidence for witness testimony, are based on the principle of the ratio decidendi in which the decision handed down must contain solid, clear, rational judgment reasons, actual, containing human values and propriety, it is feared that it has the potential to cause legal uncertainty for the parties, both victims and defendants in court, thus contradicting legal certainty, that real legal certainty is indeed more of a juridical dimension.

A further limitation of legal certainty that defines legal certainty as the possibility that in certain situations there are clear, consistent and easy to obtain (accessible) rules, the ruling agencies (government) apply these legal rules consistently and also submit to and obey him, citizens in principle adjust their behavior to these rules, independent and impartial judges (judicials) apply these legal rules consistently when they resolve legal disputes and, judicial decisions are concretely implemented .Without legal certainty, people do not know what to do and finally there is uncertainty which will eventually lead to violence (chaos) due to the indecisiveness of the legal system.[9]

The author refers that the content of the law is more determined by the elements of the judge's view in making court decisions which substantively most of these decisions are based on the principles of protecting human rights. Then the law must be seen as a unified whole system that must be continuously developed and improved, Ronald Dworkin's legal system theory has four characteristics, namely elements, relationships, structure and wholeness.

*Elements,*The evidentiary system in Indonesia uses a positive statutory proof system and a judge's belief system of proof so that this system of proof is called the multiple proof system (doubelen grondslag). In consideration by the judge regarding the strength of proof of witness testimony, *Testimonium de Auditu* in criminal cases does not have binding legal force. So it was found that the decisions

[9]Mario Julyano, Aditya Yuli Sulistyawan, Understanding the Principles of Legal Certainty through Legal Positivism Reasoning Construction, Journal of Crepido, Volume 01, Number 01, July 2019

of the Supreme Court and the Judiciary under the pre-decision of the Constitutional Court Number: 65/PUU-VIII/2010 considered the testimony of the witness *Testimonium de Auditu* as evidence of witness testimony, while after the decision of the Constitutional Court Number: 65/PUU-VIII/2010 there were those who did not consider witness *Testimonium de Auditu* testimony as evidence of witness testimony.

The judicial institutions in Indonesia on the decision of the Constitutional Court Number 65/PUU-VIII/2010 there must be a complementary relationship to address the expansion of the meaning of witnesses in the criminal evidence process in Indonesia, especially the existence of testimonials de auditu related to the strength of their evidence and the legal position of the power of proof of *Testimonium de Auditu* as witness evidence.

*structures,*The system of judicial review of the 1945 Constitution at the Constitutional Court is contained in Article 1 number 26 and number 27 jo. Article 65 jo. Article 116 paragraph (3) and paragraph (4) jo. Article 184 paragraph (1) letter a of Act No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) against Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution. If we pay close attention to the sound of the decision, the panel of judges of the Constitutional Court clearly expanded the meaning of witness as regulated in Act No. 8 of 1981 concerning the Criminal Procedure Code. This expansion of meaning is due to the "recognition" of the witness testimonialum de auditu as a witness. The Constitutional Court's decision is final and binding.

*Wholeness,*a legal system of evidence in Indonesia related to the conviction of judges in dealing with witness testimony *Testimonium de Auditu* is not subject to positive laws and regulations so that independent judges' beliefs may not consider the strength of evidence from witness testimony *Testimonium de Auditu*, the results find differences in the judgment of court decisions that vary to achieve good legal certainty, but also as something that must be continuously developed and improved.

The four important components in the legal system are considered by the author to be not complementary to each other, so that the legal system in Indonesia, facing witness testimony, has not been able to produce binding laws and functions to provide justice and legal certainty to the community. The author's opinion is the same as Ronald Dworkin's opinion that the law is considered effective if the elements, relationships, structure and legal unification can act as a mutually reinforcing unit.

There are doubts about the convictions of the Supreme Court Judges and the lower Courts in giving decisions to consider the strength of evidence from the testimony of witnesses testimonialum de auditu as evidence of valid witness statements, after the Constitutional Court Decision Number: 65/PUU-VIII/2010, because the Constitutional Court does not have the authority to force the decision to be implemented.

In the author's view, that the Constitutional Court Decision Number: 65/PUU-VIII/2010 has not created many interpretations regarding the expansion of the meaning of witnesses in the context of formal criminal law in Indonesia, indirectly the decision overhauls the provisions of witnesses stipulated in the provisions of the Criminal Procedure Code and the consequences that arise. The category of witnesses in the context of Indonesian formal criminal law currently includes witnesses to

events, witnesses to facts, witnesses against the suspect/defendant, and witnesses who benefit the suspect/defendant. That the application of the power of proof of witness testimony *Testimonium de Auditu* after the Constitutional Court Decision Number: 65/PUU-VIII/2010 so that it can be applied effectively in the investigation, prosecution and trial process requires an indication of reliability if the actual witness has died.

4. Conclusion

The results of this study indicate thatThe existence of witness *Testimonium de Auditu* related to the strength of evidence in criminal cases in Indonesia, both before and after the decision Number MK 65/PUU-VIII/2010 does not have binding legal force on the judge's consideration in deciding a criminal case in Indonesia. Legal standing, the strength of proving witness testimony, *Testimonium de Auditu* or hearsay evidence as valid evidence after the Constitutional Court Decision Number: 65/PUU-VIII/2010 so that it can be applied more effectively in the process of investigation, prosecution and trial, an indication of reliable reliability is needed sufficient, has binding legal force and contains fair considerations. There are still many differences in the views of the judges in giving their considerations regarding the evidence of witness *Testimonium de Auditu*, so that this does not provide legal certainty to the position of witness *Testimonium de Auditu*.

5. References

Journals:

[1] Mario Julyano, Aditya Yuli Sulistyawan, Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum, *Jurnal Crepido*, Volume 01, No. 01, July 2019

[2] Tiovany A. Kawengian, Peranan Keterangan Saksi Sebagai Salah Satu Alat Bukti Dalam Proses Pidana Menurut Kuhap, Jurnal Lex Privatum, Vol. IV/No. 4/Apr/2016

Books:

[1] Mahrus Ali, (2011), *Dasar-dasar Hukum Pidana,* Sinar Grafika, Yogyakarta

[2] R.Subekti, (2007), *Hukum Pembuktian*, Cetakan Ke-16, Pradnya Paramita, Jakarta

[3] Leden Marpaung, (2009), *Proses Penegakan Perkara Pidana (Penyelidikan & Penyidikan),* Sinar Grafika, Jakarta

[4] Munir Fuady, (2006), *Teori Hukum Pembuktian (Pidana dan Perdata),* PT.Citra Aditya Bakti, Bandung

Internet:

[1] *https://ngefordig.wordpress.com/2017/01/16/konsep-hearsay-dalam-bukti-digital/* accessed on July 21, 2022