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Dilemmatic of the Proofing *Testimonium De Auditu*: Indonesian Legal Studies

Yulianto Syahyu

Faculty of Law, University of Bhayangkara Jakarta Raya, Indonesia.

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ABSTRACT

The proof of *testmonium de auditu* cannot be used in criminal cases but the constitutional court's decision number 65/PUU-VIII/2010 gives the position of witness *de auditu* which creates a new dilemma in criminal trials. the method used is normative with a legal approach and a conceptual approach. The results showed that *testmonium de auditu* statement actually did not have the same evidentiary power as a factual witness, but because of the constitutional court decision that acknowledged the evidence of *testmonium de auditu* witness, the statement could be considered which in this case can be used as evidence in criminal trial accordance with what is in the criminal procedure code. The importance of witnesses does not lie in their own statements, but in the relevance of their statements to criminal cases that are being processed so that judges in assessing a criminal case do not rely solely on belief but must be based on the search for material truth in accordance with legal objectives in KUHAP.

Keywords: Evidence, *Testimonium De Auditu*, Criminal Procedure Code (KUHAP).

INTRODUCTION

Indonesia as a legal country has several kinds of laws to regulate the actions of its citizens, including criminal law and Criminal Procedure Law. These two laws have a very close relationship, because in essence, the code of Criminal Procedure is included in the definition of criminal law. It's just that Criminal Procedure or yang also known formal criminal law is more focused on the provisions that regulate how the state through its tools exercises its right to convict and impose crimes. While criminal law is more focused on legal regulations that indicate which acts should be subject to crime and what crimes can be imposed on perpetrators of criminal acts (Andi Halaluddin, 2014).

Although the law is made for a noble purpose, namely providing services for the community in order to create order, security, justice and welfare, but in reality, there are still deviations from the law, whether committed intentionally or unintentionally. Against this legal deviation, of course, must be followed up with firm legal action and through the correct legal procedures in accordance with the rules of Criminal Law Through Law No. 8 of 1981 on Criminal Procedure Law (KUHAP).

Based on the book guidelines for the implementation of the book event the Criminal code (criminal code) mentioned that the purpose of the law event of the criminal is "to seek and obtain or at least approaching the truth of the material, that is the truth which is as complete of a case of criminal by applying the provisions of the law show criminal is honest and right with the aim to find who are the actors that can be charged conduct a violation of law, next ask the examination and the verdict of the court in order to find whether proven that a follow - criminal has been done and whether the person charged it can be blamed". Through this criminal procedure law, then for every individual who commits irregularities or violations of the law, especially criminal law, can then be processed in an examination in court,

because according to the Criminal Procedure Law to prove the guilt or innocence of a defendant must go through an examination in front of a court hearing and to prove whether or not the defendant committed the alleged act required the existence of a proof.

Proof of whether or not the defendant committed the alleged act, is the most important part in the Criminal Procedure. Even in this case, human rights are at stake. For this reason, the Criminal Procedural Law aims to seek material truth, in contrast to the civil procedural law, which is quite satisfied with formal truth (Andi Hamzah, 2011). The criminal justice system has a process in revealing a crime. The process that starts from the investigation stage to the evidence at the trial, shows that the existence and role of evidence is expected and a factor determining factor in the success of uncovering a criminal offense.

In order to ensure the establishment of truth, justice and legal certainty for a person in the examination of the defendant, the judge always guided by the system of evidence outlined in Article 183 of the Criminal Procedure Code which reads: "the judge may not impose a crime on a person unless with at least two valid evidence he obtained confidence that a happens and that the accused is guilty of doing so." Based on the sentence means that the evidence must be based on the law, namely the Code of Criminal Procedure (KUHAP). Referring to the known kinds of evidence contained in the code of Criminal Procedure there is a natural Article 184 paragraph (1) which states that the legitimate evidence is among them: witness testimony; expert testimony; letters; instructions; and testimony of the defendant.

One of the means of evidence provided for in 18 paragraph 1 of the Criminal Procedure Code is witness testimony. According to 1 (27) of the criminal procedure code, the testimony of a witness is: "one of the means of evidence in a criminal case is the testimony of a witness about a criminal act that he himself heard, saw and naturally spoke. based on his knowledge." testimony between witnesses and other evidence.

This is often observed in court in cases where none yang of the witnesses definitively saw the incident and only heard about it from the victim. This certainly complicates the information given by the defendant, because witnesses who listen to other people's statements in the Criminal Procedure Code cannot be witnesses, usually witnesses are called *testmonium de auditu* witnesses. *Auditu* referring to Article 1, 27 of the code of criminal procedure described above, the testimony of the *testmonium de auditu* cannot be used as valid evidence.

Further developments regarding evidence, especially witnesses of a criminal offense, can be seen in the Constitutional Court Decision No. 65/PUU-VIII/2010, which presents a new interpretation of the witness in the code of criminal procedure, namely confession. from the witness *de auditu*. In this regard, the Constitutional Court is of the opinion that in the context of proving the fact or absence of a criminal act, the role of an alibi witness is important, even if he himself did not hear or see it himself and did not personally experience the act or crime committed by the suspect or accused (Steven, 2014).

The witness statement *testmonium de auditu* based on the Criminal Procedure Code cannot be used as evidence but due to the development of knowledge, especially in the development of legal science through the court decision above, the witness *testmonium de auditu* can currently be used as one of the evidences in the trial (Candra, 2018). Although in practice the decision of the Constitutional Court in fact raises problems, because in the legislation there is no provision that regulates the binding power of the Constitutional Court decision for everyone, and there is no provision that requires the Supreme Court and the judiciary under it to comply with the decision of the Constitutional Court, so of course this raises ambiguity regarding the strength of the evidence of the witness

testmonium de auditu itself in criminal cases. The strength of the evidence using the witness *testmonium de auditu* is not the same as the witness secara directly or referred to as a fact witness in a case that uses the witness *testmonium de auditu*, so of course it will be more difficult for the judge to pass a verdict because the judge needs to assess and consider the strength of the witness 's testimony *testmonium de auditu* in a case.

RESEARH METHODS

The type of research used is juridical normative, which is research focused on examining the application of rules or norms in the applicable positive law and the approach used is a legal approach and conceptual approach. Regarding the source of data used in this study using secondary data that are classified into three groups, namely primary, secondary and tertiary legal materials. Sources of primary legal materials used such as treatise, academic legislation, and so forth. Sources of secondary legal materials used are in the form of books, legal journals, legal magazines, expert opinions and various references related to this research. As well as source material tertiary law as supporting research in the form of legal dictionaries, internet, encyclopaedias and terms used on this research (Peter, 2013). The collection is done with the study of literature, this technique is used by the author in order to collect data in order to answer matters relating to the problem to be discussed.

RESULT AND DISCUSSION

The Concept of Proof in The Code of Criminal Procedure

Proof is the presentation of legally valid evidence by the litigants to the judge in a trial, with the aim of reinforcing the arguments about the legal facts that are the subject of the dispute, so that the judge obtains a certain basis for making a decision (Bahtiar et all, 2007).

Evidence plays a very important role in the process of examining a court hearing, because it is with this evidence that the fate of the accused is determined, and only with the proof of a criminal act can a criminal sentence be imposed. So if the results of the evidence with the means of evidence prescribed by the law are not sufficient to prove the guilt of the accused to the defendant, the defendant is released from punishment, and vice versa if the defendant's guilt can be proven, the defendant must be found guilty and he will be sentenced to criminal punishment (Yahya, 2008).

The judge must be careful, scrupulous and mature in assessing and considering issues of evidence. The judge must examine the extent to which the limit of the evidentiary provisions of each piece of evidence affirmed in Article 184 of the code of Criminal Procedure. This problem of proof is related to the provisions that regulate the means of evidence that are justified by law and that the judge may use in proving the guilt of the defendant. Both the judge, the Public Prosecutor, the defendant and the Legal Counsel, each of them is bound by the provisions of the method and assessment of evidence prescribed by law (Riska, 2020).

In the theory or system of proof, there are 5 systems of proof, the five theories or systems of proof are as follows:

a. A system or theory of proof based on positive laws (*Positief Wettelijke Bewijs Theorie*).
   This theory is said “to be “positively", because it is based only on the law, meaning that if an act has been proven in accordance with the evidence mentioned in the law, then the judge's conviction is no longer needed. So, this system of proof is also called formal proof theory (Andi & Abd Azis, 2015).
b. Evidence System or theory based on a judge's conviction (*Conviction Intivie*)
   This theory is very simple, because it does not require a rule of proof at all, and leaves everything to the discretion and opinion of the judge, which is individual (subjective). So based on this

theory, it suffices, then, that the judge bases the proof of a circumstance on mere conviction, by not being bound by a rule (*bloot gemoedelijke overtuiging, conviction intime*). In this system, the judge is based only on feeling in determining, whether a circumstance or event should be considered proven or not to be the fault of the defendant (Riska, 2020).

c. Free proof system theory
   According to this system of proof, the means and means of proof are not specified in the law, which means that the judge in using and mentioning the reasons for his decision is not at all interested in the mention of the means of evidence listed in the law but the judge is freely allowed to use other means of evidence lain. Therefore, in determining the guilt of the defendant, the judge is very free in the sense of not being bound by a provision (Tri Astuti, 2018).
d. d. A system or Theory of Evidence Based on the conviction of a judge on logical grounds (*La Conviction Rais Onnee*)
   As a middle ground, a system or theory called proof appears that is based on the conviction of the judge to a certain extent (*la conviction reasoned*). According to this theory, a judge can find a person guilty based on his conviction, a conviction based on the basis of evidence accompanied by a conclusion (*conclusive*) based on certain rules of evidence. So, the verdict of the judge was handed down with some motivation (Riska, 2020).
e. Theory of Negative Proof According to The Law
   According to this theory the judge can only impose a criminal if the evidence specified in the law exists, coupled with the conviction of the judge obtained and the existence of that evidence. In Article 183 of the Criminal Procedure Code, it is determined that a judge may not impose a crime on a person unless, with at least two valid pieces of evidence, he is convinced that a criminal act has actually occurred and that the accused is guilty of committing it (Tri Astuti, 2018).

Based on the theory of evidence above, it is known that Criminal Procedure Law follows a system of evidence or theory based on negative legislation negative (*negative wettelijk*) as a guide to criminal procedure. This can be deduced from Section 183 of the code of Criminal Procedure, first from Section 29 HIR. Section 183 of the Code of Criminal Procedure states: "*a judge shall not convict a person of a crime unless he is satisfied, on the basis of two competent instruments of evidence, that the crime actually took place and that the accused is guilty of committing* it".

As is known, the purpose of criminal justice is to find out the material truth. In the event that the jury presents yang the truth found in its verdict, it must be proven by the available evidence, which is limited by the law mentioned in Article 18 of the Criminal Code. Summing up, it can be stated that all parties must act within the limits allowed by law when using and evaluating evidence (Sugianto, 2018). The difference between the types of evidence in the Criminal Procedure Law can be seen from the provisions of Article 18 (1) of the Criminal Code according to which the evidence is considered valid, namely:

1) The testimony of witnesses;
2) Expert testimony;
3) Letter;
4) Indicators;
5) Testimony of the accused.

In general, the definition of valid evidence according to the Criminal Procedure Code, namely:

1) Witness testimony as evidence is the testimony of witnesses presented at the trial.
2) The witness is what the expert says in court.
3) A letter is a written statement made on the basis of an oath of office or a statement given on the basis of an oath,

IE. Protocol and other letters in official form authorized by public officials (Tarwiyah, 2017).

1) Confession is an act, event or circumstance that, due to the compatibility of its Person and the crime itself, indicates that the crime took place and who is the culprit.
2) The defendant's testimony is what the defendant states in the siding about the act that he committed or that he himself knew or experienced himself.

The code of Criminal Procedure (KUHAP) in Article 1 paragraph 27 describes the witness testimony is one of the evidences in a criminal case in the form of information from witnesses about a criminal event that he heard himself, he saw himself and he experienced himself by calling the reason of his knowledge.

There are several requirements that must be met for witness evidence which include formal and material requirements that are cumulative and not alternative. This means that if a testimony does not meet all the conditions yang in question, the testimony cannot be used as evidence. Witness testimony as evidence in terms of value and strength of evidence (*the degree of evidence*) evidence witness testimony is valid if it meets two categories of requirements, namely: (Windri & Ridho, 2015).

1) The Formal Conditions;

a. The witness must take an oath or promise
   Article 160 paragraph (3) of the Criminal Code states: "*before giving testimony, witnesses are obliged to swear or promise according to their respective religious ways, that he will give true testimony and nothing else than the truth*." This oath or promise must be pronounced before giving evidence, but if it is deemed necessary, the oath or promise can be pronounced after giving evidence. This is stipulated in Article 160 paragraph (4) of the Criminal Code.

b. Witnesses must be adults
   This is related to Article 171 of the Criminal Code which states that children under 15 years of age or unmarried, may testify but should not be sworn. Whereas Article 160 paragraph (3) of the Criminal Code requires an oath or promise. Witness testimony from someone who is not sworn has no power as valid evidence. Then the limit of maturity according to the Criminal Code to testify is 15 years old or married.

c. Witness mental illness
   As mentioned in Article 171 item b of the Criminal Code, considering that they cannot be perfectly accounted for in criminal law even though sometimes the memory is good again. There is no oath or affirmation for the witness. Their information can only be used as a guide only, as also applies to persons who are not adults (elucidation of Article 171 of the Criminal Code).

➢ Material Requirements

Material terms refer to Article 1 point 27 KUHAP and Article 185 Paragraph (1) KUHAP the following with explanation, namely:

- Any witness testimony beyond what he himself heard in the criminal event that occurred or beyond what he saw or experienced, information given outside the hearing, sight or experience that occurred, cannot be assessed and used as evidence.
- Witness testimony as evidence is what the witness stated at the court hearing.
- The testimony of a witness alone is not enough to prove that the accused is guilty of the act against which his accused.
- The provisions as meant in Paragraph (2) shall not apply if accompanied by any other valid proof.
- The testimony of several witnesses who stand alone about an incident or situation can be used as a valid means of evidence/if the testimony of witnesses is related to one another in such a way,

that it can justify the existence of a particular incident or situation.

- Neither opinion nor fiction, derived from thought alone, constitute witness testimony.
- In assessing the veracity of the testimony of a witness, the judge must seriously consider:

a) The relationship between one witness and another;
b) The relationship between the testimony of a witness and other evidence;
c) Reasons that may be used by witnesses to provide certain information;
d) The way of life and decency of witnesses and everything that in general can affect whether or not the testimony is believed.

- The testimony of a witness who is not sworn although in accordance with one another is not evidence but if the testimony is in accordance with the testimony of a sworn witness can be used as additional legal evidence to another.

A witness who has met the formal and material requirements means that he has the power of free evidentiary value (*vrijbewijs kracht*). This means that the judge is free to judge's testimony in accordance with his conscience, the judge is not bound by witness statements because the judge can simply get rid of witness statements as long as they are considered sufficiently based on strong arguments (Andi Halaluddin, 2014).

In principle, everyone can be a witness, but even so there are still special exceptions to those who cannot testify. This is as stated in Article 168 of the Criminal Procedure Code which reads. Unless otherwise provided in this act, it cannot be heard and may resign as a witness:

a. Blood relatives or relatives in a straight line up or down to the third degree of the accused or together as defendants.
b. Relatives of the accused or who are together as defendants, mother's brother or father's brother, as well as those who have a marital relationship and children of the defendant's brother to the third degree.
c. Husband or wife of the accused even though they are divorced or who are together as defendants."

The Dilemma of the Proofing Testimonium De Auditu

Article 1 Number 27 of Law Number 8 of 1981 on Criminal Procedure Law (KUHAP) determines that witness testimony is an evidence in a criminal case in the form of information from witnesses about a criminal event that he heard himself, he saw himself and he experienced himself by calling the reason of his knowledge. Law formers determine *imitatively* only witnesses who see, hear, and experience themselves as evidence in criminal cases. Likewise, information given outside of hearing, sight, or own experience regarding a criminal event that occurred, cannot be used and assessed as evidence (Yahya, 2008).

The same opinion expressed by Ismujoko, that the testimony of witnesses who do not meet the criteria of Article 1 Number 27 of Law No. 8 of 1981 concerning the Criminal Procedure Code, has no power as evidence. Such witness testimony is called "*Testmonium De Auditu*" (Ismujoko, 1997).

Witness *testmonium de auditu* is a legal term related to testimony, according to Munir Fuady is meant by indirect testimony or *de auditu* or *hearsay* is testimony given by someone in court to prove the truth of a legal fact, but the witness did not experience/hear/see for themselves the facts of the legal event happens (Munir Fuady, 2012). At first , the witness *testmonium de auditu* cannot be used in the trial because logically the witness *testmonium de auditu* does not know the legal facts and the explanation can be a fictional story from the person who men told him about a criminal offense, because the witness *testmonium de auditu* is not in accordance with what is meant by the witness according to Article 1 Number 27 Criminal Procedure Code, it can section *testimonium de auditu* rejected as evidence of witnesses. It is also emphasized

in the explanation of Article 185 paragraph 1 where the witness statement is not included with the information heard from others or witnesses *testmonium de auditu* (Steven Suprantio, 2014). this is because it is logically feared that if the witness *testimonium* used in the trial it will be able to cause distrust of the public in Indonesian law because if the *De Auditu* as a fact witness then it causes the non -fulfillment of the principle of legal certainty.

Along with the development of the current time regarding witness statements changed when the Constitutional Court through Decision No. 65/PUUVIII/2010 expand the meaning of witnesses in Law No. 8 of 1981 on Criminal Procedure Code with the admission of witness *testimonium de auditu* in criminal justice. The Constitutional Court in its decision states Article 1 number 26 and number 27; Article 65; Article 116 paragraph (3) and Paragraph (4); and Article 184 paragraph (1) letter A of Law No. 8 of 1981 on Criminal Procedure Law *"persons who can provide information in the context of Investigation, Prosecution, and justice is a criminal act that he does not always hear himself, he sees himself and he experiences himself"*. These ruling states that in the context of proving that a criminal act actually occurred or did not occur, the role of an alibi witness is important, even though he did not hear himself, he did not see himself, and he did not experience the existence of a criminal act or crime committed by the suspect or accused.

Constitutional Court Decision No. 65/PUU-VIII/2010 which recognizes the witness *testmonium de auditu* in criminal justice is a reflection of the protection of the rights of suspects and defendants. The protection and fulfillment of the rights of suspects and defendants is a key principle in the Criminal Procedure Law, which is guaranteed fulfillment in Article 28D paragraph (1) the 1945 Constitution, Article 3 Paragraph (2) of Law Number 39 of 1999 on Human Rights and the principle yang of equal treatment of everyone in advance law by not discriminating treatment recognized and upheld by Law No. 8 of 1981 on Criminal Procedure Law (KUHAP).

From the jurisprudence that ever existed in Indonesia cannot be clearly formulated testimony *testmonium de auditu* accepted or not, this in fact depends on the reality of case by case (Andi Halaluddin, 2014). In practice, it is known that some decisions show that the testimony *of the testmonium de auditu* can be accepted and vice versa, this depends on the judge's policy in assessing whether the witness *of the testmonium de auditu* is justified or not. As for the decisions referred to, for example, in the Interim Decision number 884/Pid.B/2012/PN.Bdg. This case at first, the defendant committed the crime f motorcycle theft by using violence. At the time of examination as a suspect before the investigator, the defendant through his legal counsel submits an application to present witnesses who can provide favorable information as referred to in Article 65 of the Criminal Procedure Code jo. Article 116 paragraph (3) jo. Article 116 paragraph (4) of the code of Criminal Procedure. Upon the request, the investigator then provides an opportunity for the legal counsel team and the suspect to present witnesses who can provide favorable information.

Witnesses who seek to be presented by the legal counsel team are witnesses who do not see themselves, do not feel themselves and do not listen to themselves (*testmonium de auditu*). These witnesses have relevance because they can explain that the defendant was out of town at the time of the incident. However, the panel of judges in the interim decision did not consider the witness *testmonium de auditu* in accordance with the contents of the Constitutional Court Decision No. 65/PUU-VIII/2010 which has binding legal force, the panel of judges the decision is based on Article 185 Paragraph (1) of the Criminal Procedure Code states, witness testimony as evidence is what the witness said in court. The explanation of the article states that "*the testimony of witnesses does not include that obtained from other persons or testimonium de auditu*".

Therefore, the provisions of the Criminal Procedure Code do not place *the Testmonium De Auditu* as valid evidence.

Another case related to *testmonium de auditu* is decision number: 697/Pid.Sus/2017/Pn.Batam about physical violence in the domestic sphere. As for the decision in conclusion the judge assessed the information given by the witness *testmonium de auditu* can be accepted because of the witness's testimony or other evidence that can be taken values that give rise to the conviction of the judge that the information presented by the witness Nur Syamsah as the witness *testimonium de auditu* also has the value of the power of proof.

With regard to jurisprudence regarding *the testmonium de auditu*, there have been many criminal law experts who argue whether *the testmonium de auditu* can be considered as a witness or not. The first thought is those who reject or do not accept the testimony *of de auditu* as evidence, which is a general rule that is still firmly adhered to by practitioners today. Witnesses who do not base their testimony from sources of knowledge as outlined in Article 1 Number 27 Article 185 Paragraph (1) of the Criminal Procedure Code are not accepted (*inadmissible*) as evidence. Similarly, according to Sudikno, *de auditu's is generally* not allowed because the information is not related to the events experienced by himself so *that De auditu's witness* is not evidence and does not need to be considered (Ramdani Wahyu Sururie, 2014).

For those who allow witnesses *testmonium de auditu*, the practitioners there is acceptance that the witness *testmonium de auditu* can be used as evidence with various forms of application. First, *the testmonium de auditu* is accepted as a stand -alone evidence that reaches the minimum limit of proof without the need for the help of other evidence if *the de auditu witness* consists of several people. In connection with this nature Supreme Court decision No. 239K/Sip/1973 date of 25 November 1975 justify *testmonium de auditu* can be used as a tool of evidence that meet the requirements of material, description of witnesses in general is according to the message, but should be considered and almost all of the events or deeds of the law that happened in the past does not have a letter, but based on the message hereditary, while the witnesses that directly face the deeds of the law that's in the past already not there anymore that life now, so with such a message down through the generations that which can be expected as a description and according to the information and knowledge tribunal judge your own message-a message as it was by the community specified in general for indigenous considered valid and correct.

Second, *testmonium de auditu* is not used as a means of direct evidence but testimony *de auditu* constructed as evidence instructions, with objective and rational considerations and instructions that can be used as a basis to prove something.

Third, confirming *the testmonium de auditu* as evidence to complete the minimum limit *unus testis of testis nullus testis* yang given by a witness. Thus, the Supreme Court Decision No. 818K/Sip/1983 dated August 13 of 1984. In the decision mentioned *Testmonium De Auditu* as information that can be used to corroborate the testimony of ordinary witnesses.

According to Munir Fuady, witness *de auditu* can be used as evidence, but it really depends on case by case. If there is good reason to believe the truth of the witness *de auditu*, for example, the information can be included in the excluded group, the witness *de auditu* can be used as evidence (Munir Fuady, 2012).

The main focus of the use *of the de auditu witness* is the extent to which *the de auditu witness can auditu* be trusted in the trial. If, according to the judge, it turns out that the testimony of a third-party witness is quite *reasonable* (reasoned), the witness 's testimony can be recognized as indirect evidence, that is, through evidence of guidance. So basically, although the

testimony *of de auditu* (witness who gets information that is told/obtained from others) is excluded from the witness statement, but at least it can be a means of proof of guidance. If this means *that De auditu's testimony* is interpreted as a clue, the strength of the evidence is the same that specified in the Criminal Procedure Code, that is, the strength of the evidence is free, not bound.

The judge is free to judge him to draw conclusions about the defendant's guilt based on the information outlined by the witness *de auditu*. The *auditu's* witness statement must also be adjusted to the limit of evidence, meaning *that auditu's witness* statement must be supported by other witness statements, expert statements, letters or statements of the defendant, so that the judge can draw clues to obtain confidence regarding the proven/not accused.

Apart from the discourse among academics and practitioners about the existence *of testimonium de auditu* in the realm of criminal law, one thing that must be considered is that the purpose and function of the judiciary is to enforce the truth and justice (*to enforce the truth and justice*), while the judge in the judicial process should not play a role in identifying laws and judges do not act like soulless beings (*antre anemimes*). Therefore, the testimony of witnesses *de auditu* actually does not automatically have to be rejected as alat evidence, the problem is not about the rejection or acceptance *of testimonium de auditu* as evidence.

In the context of proving whether a criminal act actually occurred and whether the suspect/ defendant actually committed or was involved in the act/crime in question, the role of the alibi witness becomes important, even though it is only *a testmonium de auditu*. The formulation of witnesses in Article 1 number 26 and number 27 of the Criminal Procedure Code does not include the definition of alibi witnesses, and generally denies the existence of other types of witnesses that can be classified as favorable witnesses (*a de charge*) for suspects or defendants, among others, witnesses whose testimony is needed to clarify the testimony of previous witnesses. Therefore, the importance of the witness lies not in the testimony experienced by himself, but in the relevance of his testimony to the criminal case being processed, related to the issue of who has the authority to assess whether the witness presented by the suspect or the accused has relevance to the allegation or indictment, the investigator is not justified in assessing the in favor of the suspect or accused, before actually calling and examining the expert and/or witness in question.

CONCLUSION

Evidence plays a very important role in the process of examining a court hearing. The various forms of evidence in the Criminal Procedure Law can be seen from the provisions of Article 184 paragraph (1) of the Criminal Procedure Code include witness statements; expert statements; letters; instructions; and information of the defendant. One of the most important things in proving a criminal case is the testimony of witnesses which are known *testmonium de auditu* witnesses. Witness statement *testmonium de auditu* according to the Criminal pada Procedure Code basically cannot be made as a witness but due to the development of knowledge, especially in the development of legal science based on the Constitutional Court Decision No. 65/PUUVIII/2010 which expands the meaning of the witness so as to put *testmonium de auditu* as one of the evidence in the trial pro dan contra. The power of proof using a witness *testmonium de auditu* is not the same as a direct witness or so-called fact witness. The nature of the case that uses witness *testimonium de auditu* will be more difficult for the judge to make a decision because the judge needs to assess and consider the strength of witness testimony *testimonium de auditu*. But in this case the testimony of the *testmonium de auditu* can be used as evidence for the judge's guidance in finding legal facts.

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