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TESTIMONIUM DE AUDITU AS INDICATIVE EVIDENCE IN THE PERSPECTIVE OF REFORMING INDONESIACRIMINAL PROCEDURAL CODE

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ABSTRACT : *The fact that there are still many decisions that consider the testimony of de audited witnesses, has become a very long debate among academics, especially regarding the acceptance of de audited witnesses referring to the Federal Rules of Evidence in the United States, which is the latest breakthrough regarding the use of de audited witnesses, namely through exceptions of de auditu witnesses or exceptions of hearsay. The research method used in this case is through a normative juridical approach and the approach is divided through several approaches, namely the statutory approach, the case law approach, the conceptual approach, and the comparative law approach. then analyzed qualitatively, namely data analysis by analyzing, interpreting, drawing conclusions. The results of the study show that the existence of the Constitutional Court decision number 65 / PUU-VIII / 2010 paved the way for de auditu witnesses to testify in court through indication evidence.*

KEYWORDS -*Testimonium De Auditu; Relevance of evidence; Integrated Criminal Justice System*

I. INTRODUCTION

The introduction of the paper should explain the nature of the problem, previous work, purpose, and the contribution of the paper. The contents of each section may be provided to understand easily about the paper.Evidence law is a set of legal rules governing proof, it is all processes, using valid evidence, and taking actions with special procedures in order to find out the juridical facts at the trial, the system adopted in the proof, the requirements and the procedure for presenting such evidence and the judge's authority to accept, reject and evaluate evidence (Alfitra, 2011, p. 21).

Evidence in criminal justice is a problem that plays a role in the criminal court examination process. This can be seen clearly through proving the fate of the defendant that will be sentenced to a criminal sentence if proven legally and convincingly based on legal evidence in accordance with Article 184 of Law Number 8 of 1981 Concerning Indonesia Indonesia Criminal Procedure Code, hereinafter referred to as Indonesia Criminal Procedure Code (KUHAP), which reads as follows: "The valid evidence is: a. Witness testimony; b. expert statement; c. letter; d. indicative; e. statement of the defendant."

Thus, in accordance with Article 193 paragraph 1 of the Indonesia Criminal Procedure Code: If the court is of the opinion that the defendant is guilty of committing the criminal act he is accused of, the court will pass a sentence. not imposed criminal law. However, if the court argued that according to the results of the examination at trial, the defendant's guilt for the act that was accused to him has not been legally and convincingly proven, then the defendant shall be acquitted." (Article 191 paragraph 1, Indonesia Criminal Procedure Code) (Alfitra, 2011, p. 21).

Formal sources of evidentiary law are (Alfitra, 2011, p. 22; Imron & Iqbal, 2019, pp. 21–22): a. Law, b. Doctrine or Opinion of legal experts, c. Jurisprudence or court decisionsOne of the legal sources of proof in criminal law is Law Number 8 of 1981 concerning Indonesia Criminal Procedure Code or better known as KUHAP. As we know that the Indonesia Criminal Procedure Code is one of the legacy of the Dutch colonialism

that still used so far, although it was renewed, it is also felt that there are deficiencies in the Indonesia Criminal Procedure Code or KUHAP. (Alfitra, 2011, p. 22).

This suggests that all this time, the reform of the Indonesia Criminal Procedure Code has only been patchwork. The essence of the birth of Law Number 8 of 1981 concerning the Indonesia Criminal Procedure Code is to uphold human rights and is a new era in the justice system in Indonesia (Hatta, 2008, p. 20). Adnan Buyung Nasution in an article entitled "Buyung Usulkan *Adversary System*dalam KUHAP" also said that (HUKUMONLINE, 2008):

"The revision of the Indonesia Criminal Procedure Code (KUHAP) is expected to be more able to support law enforcement and protection of human rights. So far, the Indonesia Criminal Procedure Code has become the foundation of the hopes of various parties for the implementation of a clean and fair trial. However, in its development, there were many problems regarding the formulations of the Indonesia Criminal Procedure Code. For example, the revocation of the Criminal Minutes (BAP) by witnesses, several reconsiderations, review by prosecutors, to cassation of pretrial."

In addition to the things explained by the deceased, the writer also found that one of the issues that is still hotly discussed is the use of the testimony of the *testimonium de auditu*witness as evidence in the process of proof in criminal justice in Indonesia. The definition of *testimonium de auditu* itself, according to Andi Hamzah, is a witness who hears from someone else's words, does not hear or sees the fact himself but only hears from those who are talking (Andi, 2008, p. 264; Chazawi, 2006, p. 35; Subekti, 2008, pp. 44–45).

According to Joenadi Efendi in his book entitled "Kamus Istilah Hukum Populer", the meaning of *testimonium de auditu* is testimony of witnesses presented in front of a court hearing which is the result of only thoughts or fiction obtained from others. (Efendi, Widodo, & Lutfianingsih, 2016, p. 112)

In the explanation of Article 185 paragraph 1 of the Indonesia Criminal Procedure Code, what is meant by *testimonium de auditu* is information obtained from other people or testimony de auditu. Based on the opinions presented by the experts, it is known that the witness testimony obtained from other people cannot be used as evidence because it clearly contradicts Article 185 paragraph 1 of the Indonesia Criminal Procedure Code which reads, "The witness statement as evidence is what the witness states at the court hearing".

In accordance with the Elucidation of Article 185 paragraph 1 of the Indonesia Criminal Procedure Code, it reads, "The witness testimony does not include information obtained from other people or *testimonium de auditu*(Takariawan, 2019, p. 121). It can only be considered as additional evidence provided that Article 185 paragraph 7 of the Indonesia Criminal Procedure Code is fulfilled, which reads as follows: "The testimony of a witness who is not sworn in, although in accordance with one another, does not constitute evidence, but if the statement is in accordance with the testimony of the witness who oaths can be used as additional other valid evidence" (Alfitra, 2011, p. 70).

However, in its development, there are tolerances for the use of *testimonium de auditu* witness testimony as evidence, in this case in the United States it is known as the *Exception Of The Hearsay Rules*(Fuady, 2020, p. 137 dan 138). According to Munir Fuady, the use of the *testimonium de auditu* in Indonesia Criminal Procedure Code can be maximized through evidence (Fuady, 2018, p. 120; Wangke, 2017, p. 149) and this has become a trend of evidence as an implication of the Constitutional Court Decision Number 65/PUU-VIII/2010 (Open pages 91-92) which opens opportunities for the types of witness *testimonium de auditu* to be used as evidence in criminal procedural law. the decision of the constitutional court, namely (Jannah, 2018): 1. Declare 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 Number 8 Year 1981 concerningIndonesia Criminal Procedure Code (State Gazette of the Republic of Indonesia Year 1981 Number 76 and Supplement to State Gazette of the Republic of Indonesia Number 3209) is contrary to the 1945 Constitution of the Republic of Indonesia as long as the understanding of witnesses in Article 1 number 26 and number 27; Article 65; Article 116 paragraph (3) and paragraph (4); Article 184 paragraph (1) letter a of Law Number 8 of 1981 concerning Indonesia 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), does not include *"people who can provide information in the context of investigating, prosecuting and trying a crime which he did not always hear about himself, he saw and experienced for himself*"; 2. Declare 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 Number 8 of 1981 concerning Indonesia

Criminal Procedure Code (State Gazette of the Republic of Indonesia of 1981 Number 76 and Supplement to State Gazette of the Republic of Indonesia Number 3209) does not have binding legal power as long as the meaning of witnesses is in Article 1 point. 26 and number 27; Article 65; Article 116 paragraph (3) and paragraph (4); Article 184 paragraph (1) letter a of Law Number 8 of 1981 concerning Indonesia 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), does not include *"people who can provide information in the context of investigating, prosecuting and trying a crime which he did not always hear about himself, he saw and experienced for himself ";*

In accordance with the opinion expressed by E.G. Ewaschuk that, *"The law of evidence has one basic postulate: all evidence that is logically probativeisadmissible.Admissible evidence must, therefore, be relevant to establish a basic element to be proved*.) (Ewaschuk, 1978, p. 407)

(The law of proof has one basic proposition: all logical evidence of evidence can be accepted. Therefore, acceptable evidence must be relevant by specifying the basic elements to prove it.)

So as long as the evidence is relevant and is able to prove the defendant's guilt, the evidence deserves to be acce pted even though the evidence is a *testimonium de auditu*, this is closely related to the theory of the relevance of evidence presented by Munir Fuady, which is the important urgency of the need for evidence that is relevant. Evidence not only measures whether or not there is a relationship with the facts to be proven, but with the relationship it can make the facts in question clearer. " With the use of the *testimonium de auditu*, even though the witness did not, witnessed, experienced, and heard it himself, the statement had a connection with a criminal incident and made the facts even clearer, it deserves to be considered by the witness to be used as evidence for guidance with strict assessment and the judge's own conviction.

The Constitutional Court Decision Number 65/PUU-VIII/2010 provides an opportunity to use the *testimonium de auditu* witness as evidence as long as it has relevance to a criminal event and this must be adhered to in accordance with Hans Nawiasky's theory regarding norm levels in Indonesian law. The Constitutional Court through its legal product, namely the Constitutional Court Decision, is an extension of the Indonesian Constitution to safeguard the Law so that it is in line with the ideals of the Indonesian Constitution (*Rechtidee:* Justice, Certainty and Benefit). Constitutional Court decisions are final and *erga omnes* (binding on all parties).

Based on this background, the author makes a paper that raises a study entitled *Testimonium De Auditu* as a means of evidence in the perspective of criminal procedural law reform. Based on the past, the authors formulated a problematic formula, First, what is the position of the *testimonium de auditu* witness as evidence in Law Number 8 of 1981 concerning Indonesia Criminal Procedure Codeafter the Constitutional Court Decision Number 65/PUU-VIII/2010 takes effect? Second, how do the construction of the *testimonium de auditu* as evidence and guidance for creating the *Integrated Criminal Justice System* from the perspective of reformingIndonesian Criminal Procedure Code?

II. RESEARCH METHOD

The type of research that is used is normative research which focuses on identifying and describing the implications of the Decision on the Constitution Number 65/PUU-VIII/2010 regarding the position of*testimonium de auditu*witness *(de auditu verklaring)* in Law Number 8 of 1981 Regarding the Law on Criminal Code after the enactment of the Constitutional Court Decision Number 65/PUU-VIII/2010 and the reconstruction of the description of the *testimonium de auditu*witness or *hearsay evidence* in the *Integrated Criminal Justice System.* According to Terry Hutchinson, as quoted by Peter Mahmud Marzuki defines that the research of doctrinal/normative law is as follows: (Marzuki, 2017, p. 32):

"Doctrinal research: research wich provides a systematic exposition of the rules goverming a particular legal category, analyses the relationship between rules, explain areas of difficullty and, perhaps, predicts future development."(Marzuki, 2017, p. 32).

This is according to Johny Abraham's opinion:

"Legal issues regarding the case or norms that are in the realm of realities, are the types of research that are used are normative juridical research, which is a normative research which is considered to be a normative research.

(Suggono, 2005, p. 43)." Then Peter Mahmud explained the importance of legal research as a process to find legal rules, legal principles, and legal doctrines in order to address the legal issues that are being faced.

Types and sources of legal materials in the research are 3, namely: Primary Law, which is the following law which consists of: a) Article 1 point 5 and Article 5 Act No. 48 of 2009, May 26, May , Article 1 at 27, Article 1 at 28, Article 160 points (3), Article 133 points (1), Article 168, Article 169, Article 170 points (1) and 184 points (2), verse 1 c, Article 184, which is (1) letter d, Article 186, 187 letter c, and Article 189 of the Republic of Indonesia Law Number 8 of 1981 Regarding the Criminal Code, c) Decision Number 65/PUU-VIII/2010, d) Decision Number 08/PID.B/2013/PN-GS, e) Decision Number 96 PK/PID/2016, f) Decision on State Court Judgment Number 1537/Pid.B/2016/PN JKT.UTR Year 2017, g) *Federal Rule Of Evidence.*

Then the Secondary Law, which is the law that provides an explanation of the primary law among other books, scientific writing, the results of scientific research, and a long history of research. Secondary data, namely data obtained through a library study is used to obtain theoretical findings regarding the urgency of disclosing testimony as evidence from the perspective of Indonesian speech reform. Besides that, it does not close the possibility of obtaining other laws, where the collection of legal materials is carried out in the way of reading, studying, and observing the data that are listed in the: 1. Books, 2. Literatures, 3. Scientific writings, 4. Legal documents, and 5. Legislative regulations.

The last is Tertiary Law, which is Law that provides indicative and explanations for primary law and secondary law which consists of Online Indonesian Dictionary.Data analysis in this study was carried out on data qualitatively, namely data analysis by analyzing, interpreting, drawing conclusions regarding the position of the *testimonium de auditu* witness as evidence in the Indonesia Criminal Procedure Code (KUHAP) after the Constitutional Court Decision Number 65/PUU-VIII/2010 is applied as well as the construction of the testimonial settings as evidence and guidance in creating the Integrated Criminal Justice System, from the perspective of reforming Indonesia Criminal Procedure Code.

III. RESULTS AND DISCUSSION

THE POSITION OF *TESTIMONIUM DE AUDITU* WITNESSES AS EVIDENCE IN LAW NUMBER 8 OF 1981 CONCERNING INDONESIA CRIMINAL PROCEDURE CODE AFTER THE ENACTMENT OF THE CONSTITUTIONAL COURT DECISION NUMBER 65/PUU-VIII/2010

The Constitutional Court Decision Number 65/PUU-VIII/2010 was the beginning of the recognition of the *testimonium de auditu* witness in Indonesia Criminal Procedure Code. Previously the witnesses and witness testimony were limited in accordance with those stated in Article 1 number 26 and Article 1 number 27 Law Number 8 of 1981 concerning Indonesia Indonesia Criminal Procedure Code(KUHAP).(Suprantio, 2014, p. 41).

Then the restriction changed when the Constitutional Court through decision Number 65/PUU-VIII/2010 expanded the meaning of witness in Law Number 8 of 1981 concerning Indonesia Criminal Procedure Code with the recognition of the *testimonium de auditu* witness.

According to the Constitutional Court the importance of witnesses does not lie in whether he saw, heard, or experienced a criminal event himself, but on the relevance of his testimony to a criminal case that is being processed and it is the obligation of investigators, public prosecutors and judges to summon and examine witnesses, in particular. also examine witnesses that are favorable to the suspect(Suprantio, 2014, p. 41).

The decision of the Constitutional Court Number 65/ UU-VIII/2010 which recognizes the *testimonium de auditu* witness in criminal justice is a recent breakthrough in law in particular, in criminal procedural law because this decision also guarantees the protection of the rights of suspects and defendants which is a principle in the criminal procedural law, the fulfillment of which is guaranteed in Article 28 D paragraph (1) of the 1945 Constitution, Article 3 paragraph (2) of Law Number 39 of 1999 concerning Human Rights and the Principle of Equal Treatment of everyone in face of the law by not making a distinction in treatment which is recognized and upheld by Law 8 of 1981 concerningIndonesia Criminal Procedure Code (KUHAP) (Suprantio, 2014, p. 42).In his writing entitled "The Binding Power of the Constitutional Court Decisions About *Testimonium De Auditu* in the Criminal Court" Steven Suprantio expressed his opinion: (Suprantio, 2014, p. 50):

"The decision of the Constitutional Court Number 65/PUU-VIII/2010 is final and binding and binding on everyone *(erga omnes)* because constitutional review is an abstract and general binding test and aims to uphold the constitution, because it binds everyone, including the Supreme Court and the judiciary under it. Therefore, it

has an effect on the court to consider, try and decide with due observance of the decision of the Constitutional Court for the sake of upholding the human rights principles of the suspect and/or the accused."

Implementing the decision of the Constitutional Court Number 65/PUU-VIII/2010 is a part and at the same time applying the principle of due process of law in the criminal justice process, and an effort to realize just legal certainty in a rule of law, especially in Indonesia criminal procedural law.(Siregar, 2015, p. 37).

According to the view of the Constitutional Court, the implementation of the legal process is carried out fairly for the sake of respect for human rights, which includes protecting against arbitrary actions by state officials, especially in terms of providing guarantees for suspects and defendants to fully defend themselves, the application of the principle of presumption of innocence and equality before the law.

The experts also gave their respective opinions regarding the validity of the *testimonium de auditu* as evidence, especially as evidence of guidance. According to Wirjono Projodikoro, he has the following opinion(Soetarna, 2017, pp. 58–59):

"…Judges are prohibited from using *testimonium de auditu* witness statement as evidence, about a situation that the witness only heard about from another person. This kind of prohibition is good and even appropriate, but it should be noted that if there are witnesses who testify that they have heard of a situation from other people, this kind of testimony cannot always be dismissed. It is very likely that the hearing of an incident from another person can be useful for preparing a series of evidence against the accused…"

Munir Fuady who said that(Anggraini & Mahargyo, 2015, pp. 92–93; Fuady, 2020, p. 146):

"The truth of the *testimonium de auditu* witness can be trusted depending on the case by case, for example, the statement can be included in the exempted group, the *de auditu* witness can be admitted, whether through evidence of the presumption or not. As for the Indonesia Criminal Procedure Code, it can be recognized through evidence of guidance. The testimony of the *de auditu* witness can actually be used as evidence in a criminal procedure or as evidence of presumption in a civil procedure. For this reason, it should be considered by the judge when the statement of the *de auditu* witness can be used as evidence of the allegation, because the objections and doubts in the *de auditu* witness are whether or not the statements of the witnesses who did not go to court."

Andi Hamzah also expressed his opinion regarding the testimony of *de auditu* witness, namely as follows (Andi, 2008, p. 264):

"Judgment *de auditu* is not permitted as evidence and is also in line with the objectives of criminal procedural law, namely seeking material truth, and also for the protection of human rights, where the testimony of a witness who only hears from others, is not guaranteed to be true, then the testimony *de auditu or hearsay evidence*, should not be used in Indonesia. However, the testimony of *de auditu* also needs to be heard by the judge, even though it has no value as evidence, but it can strengthen the judge's conviction which comes from the other two pieces of evidence. Due to the fact that the judge's observation is not included as evidence in Article 184 of the Indonesia Criminal Procedure Code, the *de auditu* testimony cannot be used as evidence through the observation of the judge, perhaps through the evidence of guidance, the judgment and consideration of which should be given to the judge."

Thus R. Subekti said (Soetarna, 2017, p. 59):

"However, even if the "information by hearing" was empty, it still has a meaning, Thus, it is not true that de audition's testimony has no value at all. Various testimonies from the *de auditu* can be used assumptions from which it can be concluded that something is evident."

The main focus of the use of the *de auditu* witness as evidence is the emphasis on the extent to which the statement of the witness who did not go to court can be trusted. If according to the judge hearing the statement of the third party witness is sufficiently reasonable to be believed, such witness testimony is excluded from the *de auditu.* that is to say, such witness testimony can be recognized as evidence even though indirectly, namely through evidence of evidence in a criminal procedure or through evidence of suspicion. (Fuady, 2020, p. 147).

As already stated, the *de auditu* witness statement cannot be used as full evidence. In fact, in many court decisions the testimony of the *de auditu*witness is considered completely worthless as evidence. Likewise in general the opinion of Indonesian scholars, such as M. Yahya Harahap and Sudikno, who was of the opinion, "The witness of *de auditu* has no value at all as evidence"(Fuady, 2020, p. 146).

Testimony of *de auditu* as evidence was also rejected by S.M. Amin who said the following (Andi, 2008, p. 265):

"To give evidence to *de auditu's* testimonies means that the condition of being "heard, seen or experienced" is no longer upheld. So that also indirectly obtaining the power of evidence, statements uttered by someone outside the oath. For example, A tells B, he saw C one night looking for D with his knife drawn and a face that imagined anger. The next day D's body was found stranded on a deserted street with several stabs on the body."

In the court session, in the murder examination of D, then B was heard as a witness. He told what he had heard from A that was not heard because he had died. This means, that the information used to create evidence is the testimony of witness B, not the testimony of A that should have been heard as a witness. This means that the testimony of a person who has never been met by the judge is used as evidence. The main idea that the testimony must be pronounced before the judge himself is intended so that the judge can judge the witness's testimony, from the point of view of whether it is reliable or not, based on the witness's personal review, his actions, and so on.

Although there are pros and cons to the use of *testimonium de auditu*testimony, it should still be respected by the decision of the Constitutional Court, whose decision opens the opportunity for witnesses who are *testimonium de auditu* to testify in front of the court with various considerations of course. Although the exception regarding the use of *testimonium de auditu*witness *(Exception Of The Hearsay Rule)* has not been regulated in the Indonesia Criminal Procedure Code, which is different from the United States which has regulated it in the Federal Rules Of Evidence, the exceptions are that these exceptions are many in number and kinds, namely as follows Fuady, 2020, pp. 139–144) or see *(Rule 803 Federal Rule Of Evidence):***1.** Impressions of Instantaneous Thought, **2.** Expressions of Excitement, Physical, Emotional, and Mental Conditions, **3.** Statements for the Purpose of Diagnosis of Illness or Treatment, **4.** Recorded Recollections, **5.** Records of Organized Activities, **6.** Unrecorded Organized Activities, **7.** Public Reports or Records, **8.** Important Statistical Records, **9**. Missing Public Records, **10**. Organizational Records Religious, **11.** Certificate of Marriage, Baptism, or the like, **12.** Family Records, **13.** Records in Documents Relating to Ownership, **14.** Statements in Docs umen Relating to Ownership, **15.** Statements in Classic Documents, **16.** Market Records or Commercial Publications, **17.** Statements in Journals He Has Been Studied, **18.** Reputations Regarding Personal or Family History, **19.** Reputations with Respect to General History Boundaries Land, **20.** Reputation with respect to character, **21.** Prior Judgments on Sentencing, **22.** Judgments against Personal, Family, General History, or Land Boundaries, **23.** Other Statements Equivalent to a Circumstantial Guarantee of Truth, **24**. Previous Testimony, **25**. Statements from a Dying Person, **26.** Statements Contrary to Their Interests, **27.** Statements about Personal or Family History, **28.** Express Your Thoughts or Feelings.This can be used as a learning material to develop de auditu witnesses in the process of using them in criminal evidence. for example in the case of the evidence process using witnesses in the form of *testimonium de auditu or hearsay evidence* in Indonesia, for example:

First, The witnesses were *a de charge* in the corruption case of access fees and non-tax state revenue (PNBP) fees in the Sisminbakum Project that involved Yuzril Ihza Mahendra. The four names (Megawati Soekarno Putri, Jusuf Kalla, Kwik Kian Gie and Susilo Bambang Yudhoyono) who were asked to be summoned and checked as a point of view, because they were able to respond and not be able to respond to the statement when asked, Which benefits Yuzril Ihza Mahendra, why is it that the access fee collected by the private sector who builds and operates the information technology network "Sisminbakum" with the BOT system is not collected as an Open Manager. Because the prosecutor considered it a *de auditu* witness, his testimony could not be accepted, but through the decision of the constitutional court number 65/PUU-VIII/2010 the public prosecutor's argument was rejected because it was the judge who determined whether it was appropriate for the witness to be examined and the important point was the source of knowledge. from the witness. Even though the witness is de auditu, if he is able to explain related to a criminal incident, his statement should not be rejected, especially in this case the four witnesses summoned are closely related to the Sisminbakum project and are able to explain why Sisminbakum was not included in Non-Tax Revenue (PNBP).

Second, Witnesses and chades in the case of planning killings carried out by a young man named Yusman Telumbana. In that case, this was the witness he heard in the trial that gave him a lot of suspicion. This can be seen in the first level judgments, namely Gunung Sitoli Judgment Number. There are many witnesses

who gave their testimony in this matter. The witnesses, namely Petrus Lt. Purba, witness-2 Korli Br. Purba, witness-3 Sada'rih, witness-4 Parlin Haloho, witness-5 Yosa'ati Telaumbanua, witness-6 Iteria Zai, and witness-7 Oka Iskandar Dinata Lase quite immediately straightforwardly in carrying out the murder they only knew the information from the news and from the police but did not know clearly that it was Yusman Telaumbanua who committed the murder. At the first level of court, Yusuf was sentenced to death.

However, this was not allowed because of irregularities, finally a review was submitted and it was decided that Yusman Telambanua was only assisting in a criminal act, not as the mastermind of the murder, the decision māhkāmah agung number 96 PK/PID/2016 stated that the witness used was the *de auditu* witness and from their testimony not able to prove that Yusman Telambanua was the mastermind behind the premeditated murder.

A fact witness who was able to explain, namely Rusula Hia, who was found guilty of participating in the murder, stated that the role of Yusman Telaumbanua was to help dispose of bodies because they were forced by other perpetrators.What can be learned from this case is that there is a need for synchronization of information between witnesses so that it can be proven that the criminal act occurred and who the perpetrators were. The existence of this witness testimony de auditu is a form of confirmation of other witnesses regarding a criminal incident and is able to support the testimony of the fact witnesses of the case.

Third, witnesses *a charge*in the case of blasphemy by Ir. Basuki Tjahaja Purnama. In the North Jakarta District Court Decision Number 1537/Pid.B/2016/PN JKT.UTR regarding the case of abuse by Ir. Basuki Tjahaja Purnama a.k.a Ahok, the public prosecutor has also presented a large number of witnesses, among themHabib Novel Chaidir Hasan (see page 8), Muchsin a.k.a Habib Muchsin (see page 20), Gusjoy Setiawan (see page 25-26) the witness was at the scene of the case, which is in the Kepulauan Seribu, but they got information from other people via *WhatsApp, Youtube* and *Facebook*. However, *Youtube* and *Facebook* are official *Youtube* belonging to the Jakarta regional government, different from those that get from *WhatsApp* which are video clips. However, this has been confirmed and it is true that Basuki Tjahaja Purnama committed acts of blasphemy. In this case, even though the witnesses are *de auditu* witnesses, the statements submitted are sourced from the official Youtube and Facebook belonging to the Jakarta Regional Government and this is one form of *de auditu* witnesses who have the power as evidence before the court in this case if we see the exception to *hearsay evidence* in the *Federal Rules Of Evidence*, one of which is Public Reports or Records. According to the author, there is something similar with the case of Basuki Tjahaja Purnama and this further strengthens that the *de auditu* witness must not always be rejected (Article 185 paragraph 1 and Explanation of Article 185 paragraph 1 of Law Number 8 Year 1981) but an exception must be made with conditions and provisions strictly regulated in the Indonesia Criminal Procedure Code.

Andi Hamzah, one of his recommendations and also the opinion of Adami Chazawi that, "*Testimonium de auditu* is more suitable to be input as evidence for guidance which is useful to add to witness testimony to form evidence of guidance (Article 184 paragraph 1 letter d) rather than having to be included as witness testimony Article 184 paragraph 1 letter a)(Chazawi, 2011, p. 35)."

Referring also to the theory of the relevance of evidence, the evidence must be relevant to what will be proven. If the evidence is irrelevant, the court must reject such evidence because accepting irrelevant evidence carries certain risks to the justice-seeking process, namely (Fuady, 2020, pp. 25–26; Panggabean, 2014, pp. 100–101): 1. Wasting time so that it can slow down the judicial process, 2. Can be *misleading* which creates unnecessary presumptions, 3. An assessment of the problem becomes disproportionate by exaggerating what is actually small, or downplaying what is actually big, 4 Making the judicial process irrational.

Therefore, it is very important for judges in court proceedings to know and quickly decide whether a piece of evidence is relevant or not with the facts it proves. Evidence becomes relevant when the evidence has sufficient relationship with the problem to be proven (Fuady, 2020, pp. 25–26).

After it is decided that the evidence is relevant, the next step (the second step) is to see if there are things that can be reasons to set aside the evidence, for example because of the reason the witness de auditu (Fuady, 2020, pp. 25–26).

In the process of seeing whether or not a piece of evidence is relevant (the first step), one must find out by answering the following questions(Luntungan, 2013, p. 137; Panggabean, 2014, p. 101): 1. What will be proven by the evidence ?, 2. Is what is going to be proven material/substantial in the case ?, 3. Does the

evidence have a logical relationship with the problem to be proved? is it enough to help explain the problem (enough to have an element of proof)?(Kadir, 2018, p. 158)

When the answers to all these questions are positive, then proceed to the second stage, namely to see if there are other provisions which are reasons for rejecting the evidence. The reasons or rules that must be considered, are as follows(Fuady, 2020, p. 27): 1. What is the principle of acceptance of limited evidence ?, 2. The evidence is rejected when its acceptance can cause unfair presumptions or cause confusion. 3. Is a *de auditu* witness who cannot be accepted or rejected, 4. There are extrinical reasons that can justify the rejection of the evidence, for example there are repairs made later, or there is insurance that can cover the loss, such as liability insurance liability insurance, 5. There are limitations to using evidence of character.

Munir Fuady explained that

"Relevant evidence is a means of evidence in which the use of the evidence in court proceedings is more likely to make the proven facts clearer than if the evidence is not used. Thus, the relevance of evidence is not only measured by whether or not it has a relationship with the facts to be proven, but by the relationship it can make the facts more clear. (Fuady, 2020, p. 27)."

If connected with Article 188 paragraph 1 of the Indonesia Criminal Procedure Code explains that what is meant by an indication is an act, event or situation, which because of its compatibility, either between one another, or with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is. . It does not rule out that if the *testimonium de auditu* witness has conformity and has met the requirements set out in the theory of the relevance of the evidence, then the *testimonium de auditu*evidence is included in the evidence of guidance (Article 184 paragraph 1 letter d).

This does not rule out the possibility of revising also the article 185 paragraph 1 and the explanation of article 185 paragraph 1, which finally allows the witness of the *testimonium de auditu* to testify in court by fulfilling certain conditions, one of which is that the witness must be sworn in to be truly what he stated in the trial was the real truth (Pramudita & Bambang Santoso, 2017, p. 6).

Construction of Testimonium De Auditu Regulation as a Tool of Indicative Evidence in the Integrated Criminal Justice System

Returning to the background of the problem in this paper, it is explained that the formal sources of evidentiary law are(Alfitra, 2011, p. 21): a. Constitution; b. Doctrine or Opinion of jurists; c. Jurisprudence/Court Judgments. Because the law of proof is part of the criminal procedural law, the main source of law is Law Number 8 of 1981 concerning Indonesia Criminal Procedure Code or KUHAP, State Gazette of the Republic of Indonesia of 1981 No. 76 and its explanations contained in the Supplement to the State Gazette of the Republic of Indonesia No. 3209 regarding the testimonium de auditu firmly rejected the testimony testified before the trial (Alfitra, 2011, p. 22).

Pros and cons among the experts, some agree and some disagree. The peak is the Constitutional Court Decision which emphasizes that the importance of witnesses does not lie in hearing, seeing for themselves, and experiencing for themselves, but in the relevance of the evidence to criminal acts.

In Alfitra's book, it is also explained that if in practice there are difficulties in its application or find deficiencies or to fulfill needs, doctrine or jurisprudence is used. (Alfitra, 2011, p. 22). However, in this case, departing from these legal sources of evidence becomes a reference for the author to recommend an arrangement regarding the *testimonium de auditu* as evidence which will lead to legal certainty, so the arrangements must be clarified. This is in accordance with Article 3 of the Indonesia Criminal Procedure Code (the principle of legality in criminal procedural law, namely *nullum iudicium sine lege*) which states that, "Enforcement of criminal law (including the judiciary) is carried out in a manner regulated by legislation (Moeliono, 2015, p. 599). Besides that, he also sees the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 NRI Constitution as the main basis for the formation of a law in this case related to Article 1 paragraph 3 of the 1945 NRI UUD and Article 28 of the 1945 NRI Constitution.

In this case also we must not forget the highest rules and contradict each other because the essence of the norm is a measure that must be obeyed by someone in relation to the same or with the environment. Are, and are often also referred to as guidelines, patterns, or rules in Indonesian language. In the development of these norms it is assumed to be a size or set for someone who acts or acts as a person.

Thus, the core of a norm are all the rules that must be obeyed. According to Hans Kelsen, legal norms are rules, patterns or standards that need to be followed. Then it is further explained that the function of legal norms, is(Farida, 2007, p. 6; Rudin, 2015, p. 15): a. Ask, b. Against, c. Adopting, d. Allow, e. Deviate from certainty.

According to Aldolf Merkl, a legal norm is above and is the source of legal norms underneath so that a legal norm has a validity *(rechtskracht)* which is relative by the condition that the law remains in effect If the legal norms that he has overturned or removed, then the legal norms that were under him are also affected and then (Widiarto, 2019, pp. 36–37; Yuliandri, 2011, p. 21).

In his normal level theory, Hans Kelsen also describes his theory of legal norms *(Stufentheori)*, where he argues that the legal norms of legal norms are hierarchical and hierarchical, quite hierarchical and hierarchical. And based on higher norms, higher prevailing norms, sourced and based on higher norms, and so on the same as those that are not hypothetical and can be traced more hypothetically. So that the data base is often referred to as *"Grundnorm"* or *"Ursprungnorm"* (Basic Norm) (Marjan Miharja, 2019, p. 35).

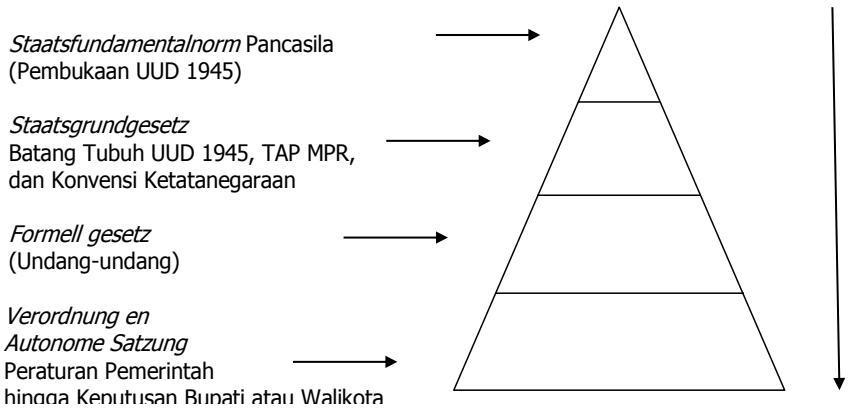
This opinion from Hans Kelsen was developed by Hans Nwisky to become the "*Staatfundamentalnorm*" or Fundamental Norms of the State. (Prasetyo, 2013, p. 69). Then it is finalized in Hans Nawiasky's theory which is called *theorie von stufenufbau der rechtsordnung*, this theory has the opinion that while the norm is multiple and tiered, the legal norms of such groups.

Hans Nawiasky grouped the legal norms in such a country into four large groups consisting of (Widiarto, 2019, p. 38): 1. Group I, *Staatfundamentalnorm* (the fundamental norms of the country), 2. Group II, *Staatgrundgesetz* (the basic rules of the country), 3. Group III, *Formell Gezetz* (formal rules), 4. Group IV, *Verodnung & Autonome Satzung* (implementation & autonomous arrangements).

By using the theory of Hans Nawiasky A. Hamid S. Attamimi shows the hierarchical structure of Indonesian legal order, and based on this theory, why the structure of Indonesian legal order is(Huda, 2006, p. 31; Safa'at, Nyoman, & Imam, 2013, p. 127): 1. *Staatsfundamentalnorm*:Pancasila (The opening of the 1945 Constitution), 2. *Staatsgrundgesetz*:Body of the 1945 Constitution, TAP of the MPR, and the State Regulations Convention, 3. *Formell gesetz*:Law, 4. *Verordnung en Autonome Satzung*:hierarchically starting from the Government Regulation to the Decree of the Regent or Mayor.

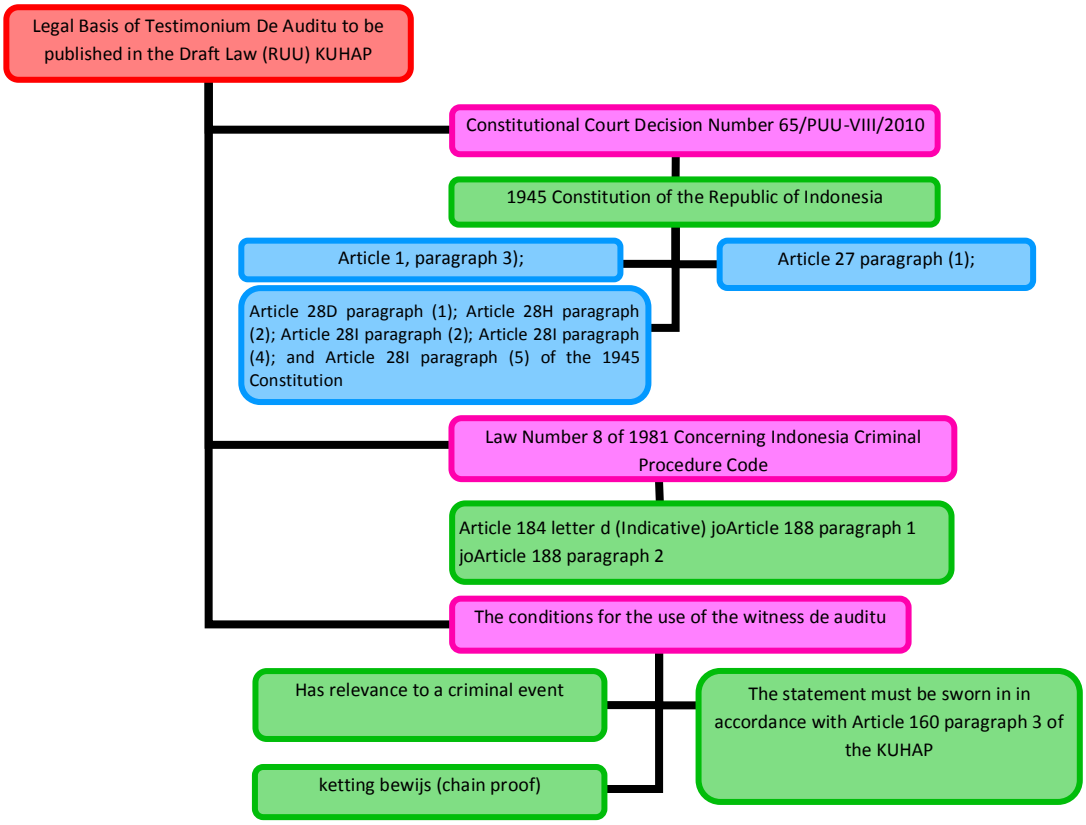
The schematic of the structure of the Indonesian legal order as described above, can be described as follows (Erwinsyahbana & Syahbana, 2018, p. 16):

Figure 1.1 ***Indonesian Legal Order Structure***



Regarding to this research, this norm level theory is that the author formulates a concept map in the construction of the arrangement of the witness testimony de auditu as evidence, namely

Figure 1.2 ***Construction of De auditu Witness Arrangements in the Draft Indonesia Criminal Procedure Code***



By looking at the concept map, the *testimonium de auditu*witness is not always rejected to be used as evidence, but it can also be used as evidence, namely indicative with certain requirements, in American law this is known as the *exception of the hearsay rule*. The key in using a *testimonium de auditu* witness is to focus on its relevance to a criminal event as long as it is able to reveal a criminal event, it should be considered by the judge as evidence.

In line with creating an integrated and coordinated criminal justice system in his book Muladi refers to legal system theory of Lawrence. M. Friedman, that is (Muladi, 1995, p. 1): a. Substance, b. Structure, c. Culture or Culture

According to Friedmann, a legal system in its actual operation is a complex organism in which the structure, substance, and culture interact to explain the background and effect of each part, which requires the role of many elements of the system. In other words, a legal system is supposed to guarantee the distribution of the objectives of the law in Indonesian society (Marbun, 2014, p. 568)

An integrated criminal justice system is a system that is able to balance the protection of interests, both the interests of the state, the interests of the community, and the interests of individuals including the interests of perpetrators of crime and victims of crime. (SUPRIYANTA, 2009, p. 12).

According to Muladi, the meaning of *integrated criminal justice system* is synchronization or the greediness and harmony that can be distinguished in (SUPRIYANTA, 2009, p. 12): a. Structural synchronization; b. Substantial synchronization; c. Cultural synchronization.

Structural synchronization is the coherence and harmony within the framework of the relationship between law enforcement agencies. Substantial synchronization is the greed and harmony that is vertical and horizontal in relation to positive law, while cultural synchronization is the greed and harmony in living the views, attitudes and philosophies that underlie the overall course of the criminal justice system. (SUPRIYANTA, 2009, p. 12).

Then, in order to create an *Integrated Criminal Justice System*, one of them is to improve its substance (substantial synchronization) which in this case is to include *testimonium de auditu*witness as evidence for guidance in criminal procedural law (Law Number 8 of 1981) in the criminal justice system as the form of implementation of the 1945 Constitution of the Republic of Indonesia, especially Article 1 paragraph 3 which states that Indonesia is a state based on law, meaning that all actions or actions carried out must be in

accordance with the applicable law as well as Article 28 D paragraph 1 concerning Everyone has the right to comply guarantee of legal protection, legal certainty and equal treatment before the law and also adhere to the legality principle in article 3 of the Indonesia Criminal Procedure Code. But in the use of this exception the terms to use it are very strict and not arbitrary to use (Fuady, 2020, p. 149).

IV. CONCLUSION

The testimony of the *testimonium de auditu* witness is traced more deeply to have a position as evidence of guidance in the process of proving a criminal incident because the focus is the relevance (compliance) in the use of the witness whose *testimonium de auditus*hould have reasonable reasons for its use. In fact, at first, the Indonesia Criminal Procedure Code itself firmly rejected this testimony, but with the Constitutional Court decision Number 65/PUU-VIII/2010 opened a gap for the witness de auditu to testify because the focus was not having to hear alone, see for yourself, or experience it yourself but the focus was how much What is the relationship between the statement or statement disclosed by the *de auditu* witness in proving an incident of a criminal act and far in the future to prove the perpetrator of the criminal act.

But it should be remembered again to ensure legal certainty and maintain justice in criminal justice, it must also be regulated in Law Number 8 of 1981 concerning Indonesia Criminal Procedure Code relating to exceptions in the use of *testimonium de auditu* or in the *Federal Rules Of Evidence* in the United States. known as the *Exception Of The Hearsay Rule.* Regarding the restrictions set forth in the Indonesia Criminal Procedure Code, it is important to implement Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia and Article 28 D paragraph 1 of the 1945 Constitution of the Republic of Indonesia. This is also for the sake of creating an Integrated Criminal Justice System through synchronization of the substance in the formal criminal law (Indonesia Indonesia Criminal Procedure Code).

V. Acknowledgements

For the DPR as a legislative institution, it is necessary to revise article 185 paragraph 1 of theIndonesia Criminal Procedure Code along with its explanation so that there is no conflict of norms between article 1 number 26 and article 1 number 27 Indonesia Criminal Procedure Code (KUHAP) which has become widespread. Meaning by the Constitutional Court through the Decision of the Constitutional Court Number 65 / PUU-VIII / 2010. The decision of the Constitutional Court is based on the 1945 Constitution which wants to protect rights and maintain legal certainty itself. As well as law enforcement officials and academics open their minds to the development of guidelines for the use of witness testimony which is de auditu's testimony because we will benefit in fulfilling the need for evidence in the field of criminal procedural law in particular. The most important thing in using de audited witness testimony is that we must be more careful and careful with witness testimony, namely de audited testimony and witness testimony which constitutes de audited testimony which has a relationship with witness testimony. The criminal case in question.

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