Proof of Child Crime in the Judicial Process Seen from Article 1 Point 27 of the Criminal Procedure Code (Kuhap) Case Study in Decision 380/Pid.Sus/2022/Pnckr.”

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Abstract  
This research was conducted with the aim of knowing how the position of witnesses in criminal cases and what is the role of witnesses as one of the tools of evidence in criminal proceedings according to the Criminal Procedure Code. By using normative juridical research methods it can be concluded: that the position of a witness in a criminal case is a powerful means of proof to reveal and dismantle crimes. From the investigation stage to proof before the court, even in practice, the position of a witness is very important, often a determining factor and success in disclosing a case, because it can provide 'witness testimony' which is placed as the first of the five valid pieces of evidence as stipulated in the Article 184 KUHAP. Without the presence and role of a witness, it is certain that a case will become an obscure event, because in the legal system in force in Indonesia, what is the reference for law enforcers is a statement or statement that can only be obtained from a witness or expert, as well as the role of the witness' statement as wrong. One means of evidence in the criminal case process will be able to reveal the crime that occurred. Because the testimony of the witness is of its nature as the main means of evidence, it will be difficult for the witness' statement to prove that the crime charged against the defendant is denied by the defendant.

Keywords: witness testimony, evidence, criminal process.

INTRODUCTION  
Criminal acts can happen to anyone, including children, this is because a child is still vulnerable to crime. Therefore, it is necessary to supervise and protect children, both by families and the government through laws and regulations that can protect children from criminal acts or crimes themselves.

Against a child whose conduct is compelled to face the law even before the court must be protected his human rights as set out in special International conventions as in the Declaration of the Rights of the Child which states "... the child, by reasons of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth" (Harkristuti Harkrisnowo, 2002:4).

In relation to the settlement of criminal acts, both criminal acts committed by adults and criminal acts committed by children, a witness is needed who is the giver of information for the purposes of investigation, prosecution, and justice, as stated in Article 1 number 27 of the Criminal Procedure Code as follows;

“The testimony of a witness is one of the evidence in a criminal case in the form of testimony from a witness about a criminal event that he heard himself, he saw for himself and he experienced himself by citing the reason for his knowledge”.

According to M. Yahya Harahap, in his book Discussion, Problems and Application of the Criminal Procedure Code, it is explained that the testimony of witnesses that are appropriate for judicial purposes, it is enough to pay attention to the explanation of Article 1 point 27, connected with Article 116 paragraph (2): The witness must give the actual testimony, namely the actual information in connection with the criminal act being examined. The place to go in examining witnesses is the criminal act being examined itself, so that the investigator actually gets the truth of the crime from the witness, within the limits of a way that does not contain pressure and coercion. The true element of witness testimony for judicial or judicial purposes is the information intended by Article 1 point 27 and Article 185 paragraph (5). With this affirmation the investigator can already direct the examination of witnesses: information about a criminal event, which he hears is not the result of stories or
hearings from others. It must be directly personally heard by the witness himself about the criminal event that is seriously witnessed by the eyes of the head himself, then that way Article 1 number 27 of the Criminal Procedure Code aims for judicial purposes in order to obtain the essence of the validity of the criminal event and provide legal guarantees and protection for suspects and defendants so that they are not suspected or charged not based on the facts.

The testimony of witnesses as evidence, that is, what the witness states in court proceedings that are heavily dotted as evidence is shown to problems related to proving the testimony of witnesses has the power of proof. Article 1 paragraph 27 of the Criminal Procedure Code: what is explained in the trial by the witness is;

1. What the witness sees, hears and experiences himself by citing the reasons why the witness can see, hear and experience it.
2. The testimony of witnesses in front of the investigator is not a witness statement but only as a case file which is a guideline for the judge to examine the case in the trial.

Witness testimony is one of the evidence in the first order to show the role of witnesses is very important. The testimony of several witnesses can convince the judge that a crime actually occurred such as the prosecutor's indictment, or otherwise corroborate the defendant's alibi. The testimony of a witness in a position as evidence, is issued or at least recycled on the memory of a person as a subject of law. As a (human being) with rights and obligations, witnesses are also inseparable from interests.

Basically, in the trial of juvenile crimes, it is expected that there will be witnesses who provide explanations according to the actual events, this is the role of the Judge to open the light of witnesses and evidence in the case of the child crime. Which is basically the judge is obliged to do rechtswending because there is a rechtvakuum state. This argument is also in line with the provisions of Article 10 paragraph (1) of Law Number 48 of 2009 concerning judicial power which states, "The court is prohibited from refusing, to examine, adjudicate, and decide a case filed under the pretext that the law does not exist or is not clear, but is obliged to examine and adjudicate it." For the sake of truth and fairness the judge is obliged to examine, adjudicate, and decide the objections raised by the defendant or legal counsel despite the circumstances of the rechtvakuum.

In an example of testimony of a criminal act that occurred in 2022, the testimony of the witnesses presented by the Public Prosecution may be used to unearth the facts of the criminal acts committed by the Defendant, whereby the testimony of such witnesses has relevance to the case being processed, as outlined in the prosecution letter of the Public Prosecutor, even though the witnesses did not see, hear and experience the criminal events committed by the Defendant themselves, and the testimony of such witnesses is appropriate with the testimony of the victim (child) and the defendant before the trial. This is in accordance with the Constitutional Court Decision Number 65/PUU-VIII/2010 dated August 2, 2011, which basically defines a witness as "a person who can provide information in the context of investigation, prosecution, and trial of a criminal act that is not always heard by himself; he sees for himself, and he experiences himself."

Constitutional Court Decision No. 65/PUU-VIII/2010 decided on August 2, 2011 has expanded the meaning of witness testimony in Article 1 number 26 and number 27; Article 65; Article 116 paragraph (3) and paragraph (4); Article 184 paragraph (1) letter a of the Criminal Procedure Code is contrary to the 1945 Constitution insofar as the definition of witnesses in Article 1 numbers 26 and 27; Article 65; Article 116 paragraph (3) and paragraph (4); Article 184 paragraph (1) letter a of the Criminal Procedure Code. The point is to expand the notion of witness testimony to not just "the person who gives testimony in the course of the investigation, prosecution, and trial of a criminal act that he hears for himself, he sees for himself and he experiences himself". But it was expanded to "a person who can give information in the course of the investigation, prosecution, and trial of a criminal act that he did not always hear for himself, he saw for himself and he experienced for himself." The Constitutional Court held in its ruling:

"that the arrangement or understanding of witnesses in the Criminal Procedure Code, as provided in the articles requested for testing, gives rise to a multi-

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interpretable understanding and violates the principle of lex certa and the principle of lex stricta as a general principle in the formation of criminal legislation. Provisions that are multi-interpreted in criminal procedural law can result in legal uncertainty for citizens, because in criminal procedural law there is a deal between investigators, public prosecutors, and judges who have the authority to examine with suspects or defendants who are entitled to legal protection”.

According to the Constitutional Court’s opinion on the formulation of witnesses in the articles requested for material test, namely in Article 1 number 26 and number 27; Article 65; Article 116 paragraph (3) and paragraph (4); Article 184 paragraph (1) letter a of the Criminal Procedure Code is contrary to the 1945 Constitution as long as the definition 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 the Criminal Procedure Code is considered contrary to the principle of lex certa as well as the principle of lex stricta. The Lex Certa Principle means that it must be clear what its intent and scope are while the Lex Stricta Principle means that it must be written and clear its boundaries so that with both principles it prevents the occurrence of multiple interpretations in the arrangement of the understanding of the evidence of witness testimony in criminal cases. The researcher wants to describe the process of proving Child Crimes based on Article 1 number 27 of the Criminal Procedure Code (KUHAP)

Based on the description above, the researcher is interested in making the title of this study: "Proof of Child Crimes in the Judicial Process Seen From Article 1 Number 27 of the Criminal Procedure Code (Kuhap) Case Study in the Decision 380/Pid.Sus/2022/Pncr."

METHOD

In this study, the approach used is a normative juridical approach. The normative juridical approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this research. The type of research used is Qualitative research, namely understanding phenomena through holistic images and multiplying understanding in depth, using inductive data analysis and using medel theory concepts, and fixed comparison methods carried out based on observation notes, with the aim of explaining the context to be presented in a case. To obtain primary data researchers refer to the data or facts obtained. Secondary data was carried out by means of literature studies, Cikarang Negari Court Class II, Sukamahi, Central Cikarang District, Bekasi Regency, West Java 17530

Data collection techniques are carried out by collecting data that is relevant or as needed for research from books, scientific articles, news, and, other credible sources that are reliable and also in accordance with the topic of research carried out. Data Analysis Method The analysis is carried out by an intreperformance analysis of legal synchronization, and systematic. This analysis is a skinative analysis, which is carried out by descriptive, inferential, and analytical analysis.

Legal interpretation consists of: interpretation aimed at finding and assisting the law, what is done must be reasonable and logical, analytical analysis means an attempt to explain and maintain the results of descriptive analysis and imperesial analysis using the point of view of the object governed by law.
RESULTS AND DISCUSSION

Analysis of Decision No. 380/Pid.Sus/2022/Pnckr is Related to the Proof of Child Crimes in the Judicial Process in Article 1 Number 27 of the Book (Kuhap) and the Decision of the Constitutional Court No. 65/Puu-Viii/2010.

A. Judgment No. 380/Pid.Sus/2022/PNCr.

The Cikarang District Court, which adjudicates criminal cases with ordinary examination in the first instance, handed down judgments in the case to the defendants. In this trial by the Public Prosecutor filed and stated the identity of the defendant in full and his identity as written in the indictment of the Public Prosecutor and in accordance with the testimony of the victim's Child, witnesses, and the testimony of the Defendant, where the defendant was said to have deliberately committed a ruse, a series of lies, or induced the child to have intercourse with him or with another person.

Law of the Republic of Indonesia Number 23 of 2002 explains the meaning of a child in Article 1 number 1 is a person who is not yet 18 (eighteen) years old, including the defendant who is still in the womb.

According to R.Soesilo (Penal Code, Politeia, Page 209) it is said that what is meant by copulation is a combination of male and female pubic members that are commonly run to obtain the Defendant, so the male member must enter into the female member, thus releasing semen, according to Arrest Hooge Raad February 5, 1912 (d.9292). because because the element intentionally lies in precedence over the element of committing violence or threats of coercive violence, or the element of committing a ruse, a series of lies, or inducing the Defendant to have intercourse with him or with another person, the element of inequality must be directed at all the elements in the order behind it. What is meant intentionally here is the willingness to do or not to do an act that is prohibited or an act ordered by law. A person who does an act intentionally must desire the deed and must insinuate/understand the consequences of the deed.

Regarding the deed of deceit here, what is meant by deceit is as an act that is such and that gives rise to the impression or belief about the truth of the actual deed it is untrue, and a lie in this case has another meaning that is meant by a series of lies is that many false words are arranged in such a way, so that one lie can be closed with the other lie so that the whole is a story that seems to be true.

In this instance the point of persuading is that the person exercises influence with cunning over the person, so that the person obeys him to do something that if he knows his actual case will not do so.

It is known that there has been peace between the defendant and the victim's child, where the Defendant and the victim's child have made an agreement dated April 27, 2022 and the defendant's family has also handed over the defendant's house certificate to the victim's family as the evidence submitted by the defendant's legal counsel, so that based on the aforementioned considerations the panel of judges rejected the restitution submitted by the Public Prosecutor because the amount submitted in the restitution according to the Panel of Judges the nominal is equal to the amount proposed in the restitution.

On the whole of the Pledoi and duplication along with the witnesses A de Charge, and the objections in the proceedings of this case, which have been submitted by the Defendant through his Legal Counsel are the opinions of each party which are also the basis for the consideration of the Panel of Judges in deliberating to render a verdict on this case based on the Letter of Indictment and everything that is revealed in the court, in conducting the defendant's defense through the defendant's legal counsel who essentially requested to the panel of judges that the defendant be released from all charges or at least reduce the defendant's sentence against the matter The panel of judges had previously entered into deliberations before passing a fair verdict.

Based on valid and fulfilled evidence, the panel of judges obtained a conviction from the valid evidence that the defendant was the person who committed it and no other evidence was found which was used as the basis for forgiving reasons that could erase the guilt of the defendant or the justifying reasons that could erase the unlawful nature of the
Defendant's actions, and on the basis of these reasons, the defendant was declared valid to be found guilty of committing criminal acts violate Article 81 paragraph (2) of The Law of the Republic of Indonesia Number 35 of 2014 concerning child protection Jo Article 64 paragraph (1) of the Criminal Code with the qualification to persuade children to have intercourse with him.

Article 64 paragraph (1) of the Criminal Code reads:

“If between several acts, although each is a crime or offense, there is such a connection that it should be viewed as one continuing act, then only one criminal rule, if different, is applied which contains the most severe underlying criminal threat”.

The Panel of Judges gave a statement that the purpose of the actual conviction was not solely to retaliate but to make the defendant aware of his guilt so that the defendant could return to society properly. Criminal convictions according to the Panel of Judges must pay attention to the principle of procursion (in accordance with the level of guilt of the Defendant) or fulfill the purpose of punishment which must be corrective, preventive, and educational and have the good and evil nature of the Defendant as required by Article 8 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power. Moreover, because the Defendant regrets his actions, therefore the defendant's application for leniency is well founded by the Panel of Judges who are about to impose the sentence.

Based on the consideration of the dispute between the defendant and the victim's child where a letter of agreement has been made and the defendant has also handed over the defendant's house certificate to the victim's child, the panel of judges agreed with the public prosecutor on his demands specifically regarding the imposition of a fine, but the panel of judges did not agree with the substitute sentence if the defendant was unable to pay the fine because the defendant had been sentenced to imprisonment.

The defendant is declared valid and conclusively proven guilty of committing a criminal offense, then based on Article 222 paragraph (1), Article 197 paragraph (1) letter I of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) and Circular Letter No. 17 of 1983 concerning the Cost of Criminal Cases, the Panel of Judges will burden the defendant to pay the cost of the case, the amount of which will be adjusted to the economic ability of the defendant and will be mentioned in the judgment amar .ini. The Panel of Judges considered the mitigating and aggravating circumstances on the defendant, which relieved the defendant, namely 1) The defendant acknowledged and regretted his actions, 2) the defendant had never been convicted of aggravating circumstances, 3) the defendant's actions were troubling to the community. Thus the accused has been validly and conclusively proved guilty of committing the criminal tindak "Knowingly inducing the child to have intercourse with him on an ongoing basis", imposing a sentence of 9 (nine) years with a fine of Rp. 100,000,000.00 (One hundred million rupiah), the verdict was pronounced by the Panel of Judges and assisted by the Public Prosecutor and before the defendant accompanied by the defendant's legal counsel.

**B. Evidentiary Analysis based on Article 27 paragraph (1) of the Criminal Procedure Code and Constitutional Court Decision No. 65/PUU-VIII/2010 is associated with Supreme Court Decision No. 380/Pid.Sus/2022/PNCkr.**

The evidentiary stage occupies a central place in the criminal procedural law. In criminal cases the purpose of proof is to seek and obtain material truth. Efforts to find and obtain this material truth are carried out through a process that is an examination at the level of investigation, prosecution, and finally examination at the court hearing.

Efforts to find and obtain material truth through the examination process in court hearings are usually only about certain past circumstances. According to Wirjono Projidikoro, that criminal proceedings can actually only show a way to try to approach as much as possible the harmony between the judge's beliefs and the true truth (1981:89). This proof is determined by the judge who must decide the case. What must be proven is a concrete event, not something abstract. Judges in seeking this truth are done through the provisions of the applicable law. This proof must also be based on reason based on legally valid evidence. The evidence must be able to be captured by the senses. In the criminal
procedural law, the evidence is contained in Article 184 of the Criminal Procedure Code which consists of: witness statements; expert description; letter; Instructions; and the defendant's description.

In theory, several systems of proof are known, namely first, it is a mere belief system where in this system, proving something is considered sufficient based on mere belief. So according to this system the proof is not related to a rule. It can be just by feeling alone in determining, what a state of affairs has proven. Nevertheless there must still be a reason based on the thought logically, that a state of affairs is evident though it does not necessarily mention those reasons. According to this system, it can wear any evidence. This system turns out to have a weakness, namely that there is too much confidence in the accuracy of individual impressions. Another weakness is that the rulings cannot be known for their considerations.

Second, the system is only lawful (positief-wettelijk). In this system the Law has established which evidence tools are used, the power of proof and how to use them. Third, the system according to the Law to a limit (negatief-wettelijk). In this system, the evidence used has been stipulated in the Law, as well as on how to use the evidence. Here it is forbidden to use other evidence not mentioned in the Act. There is a connection to the means of using such evidence under the provisions of the Act. In addition to the evidence, it also still requires conviction.

Fourth, is a belief system based on thought reasons (conviction rasissone). In this system, in using and stating the reasons for making a decision, it is not tied to the evidence and how to use the evidence in the Law but the judge is free to use other evidence, the important thing is that the evidence is based on logic.

The criminal procedure law in Indonesia as stipulated in the Criminal Procedure Code adheres to the provision that: "A judge may not sentence a person unless with at least two valid pieces of evidence he or she obtains a conviction that a criminal act actually occurred and that it is the defendant who is guilty of committing it. So with the belief in the guilt of a certain person, it is only based on one piece of evidence contrary to the minimum principle of proof implied and expressed in Article 183 of the Criminal Procedure Code.

Evidence of witness testimony in criminal cases plays a very important role in proving a criminal case. Based on the provisions of Article 1 number 26 of the Criminal Procedure Code, the testimony of witnesses that he did not hear himself, did not see for himself, and which he did not experience himself juridically has no evidentiary value. However, based on the Constitutional Court's ruling, the definition of witnesses and witness statements has been expanded by the Constitutional Court by stating that the witnesses and witness statements include "a person who can give testimony in the context of investigating, prosecuting, and prosecuting a criminal act that he does not always hear himself, he sees for himself, and he experiences himself". The Court's decision, which is final and binding, juridically theoretically, will have serious implications in the assessment of the evidence of the witness's testimony.

According to M. Yahya Harahap, in his book Discussion, Problems, and Application of the Kuhap Volume I, PT. Kartini Library, December 1993, p. 1993. 146, stating that the testimony of a witness which is appropriate for judicial purposes, is sufficiently observed in accordance with the explanation of Article 1 point 27, connected with Article 116 subsection (2): The witness must give actual particulars i.e. actual particulars in relation to the criminal offence under examination. The place to go in examining witnesses is the criminal act being examined itself, so that the investigator actually gets the truth of the crime from the witness, within the limits of a way that does not contain pressure and coercion. The true element of witness testimony for judicial or judicial purposes is the information intended by Article 1 point 27 and Article 185 paragraph (5). With this affirmation the investigator can already direct the examination of witnesses: information about a criminal event, which he hears is not the result of stories or hearings from others. It must be directly personally heard by the witness himself about the criminal event in question, which he saw for himself, meaning at the time of the incident or "a barrage of criminal events that were seriously witnessed by the eyes of the head". Thus, the provisions of Article 1 point 27 of the Criminal Procedure Code aim at the judicial interest in obtaining the truth of criminal events and...
providing legal guarantees and protection for suspects and defendants so that they are not suspected or charged not based on existing facts.

Based on the information stated by M. Yahya Harahap above that "the events or series of criminal events that are truly witnessed by the eyes themselves" in other words the nature of the truth. The essence of material truth is the essence to be achieved by this criminal procedural law is a manifestation of the function of criminal procedural law, namely; 1. Seek and discover the truth; 2. The granting of a decision by the judge, and 3. Implementation of decisions. This function of seeking and finding truth is in line with the provisions of Article 183 of the Criminal Procedure Code so that it can be concluded that it is once again the "nature of the real material truth", so it is not "approaching the material truth" or moreover not "at least approaching the material truth" then based on such a thing as stated by the Public Prosecutor (JPU) namely The Defendant has repeatedly or more than (1) had intercourse with Sri Wulandari's child, based on the facts revealed at the trial as the Public Prosecutor had outlined in the Public Prosecutor's Letter and the arguments put forward by the Defendant's Legal Counsel, it is clear that there is a discrepancy between the testimony of Sri Wulandari's child and the defendant's statement, where in essence Sri Wulandari's son and the Defendant both explained that the Defendant had many times or more than 1 (one) had intercourse with Sri wulandari's child in 2021. Such "multiple times" must be with a definite and accountable calculation, with sufficient supporting evidence, showing the date, time, and place of the incident. Such information does not meet Article 183 of the Criminal Procedure Code which is the "true nature of material truth".

That based on our analysis of the Constitutional Court Decision Number: 65/PUU-VIII/2010, we can conclude that the Constitutional Court Decision Number: 65/PUU-VIII/2010 is contrary to the provisions of Article 2 of Law No. 48 of 2009 concerning Judicial Power. The discrepancy is explained in Article 2 of Law No. 48 of 2009, namely that, "The State Judiciary is obliged to apply and uphold law and justice based on Pancasila".

Master of Business Law, Steven Suprantio in the article The Binding Power of the Constitutional Court's Decision on Testimonium De Auditu in Criminal Justice explained that in fact judges in a quo case to consider and apply the Constitutional Court Decision Number: 65/PUU-VIII/2010 if the right of the suspect or the right of the defendant to present witnesses testimonium de auditu. It cannot be justified because it is incompatible with the lofty ideals of judicial power to administer the judiciary to uphold law and justice. Based on the explanation presented by Zoelva, 2006 that, Violation of the rights of suspects and / or defendants is not in line with the principle of the state of law which contains the principle of the state of law, which contains principles; the power of an independent judiciary, respect for human rights and powers exercised under the principle of due process of law.

Provisions of Article 10 paragraph (1) of Law Number 48 of 2009 concerning judicial power which states, "The court is prohibited from refusing, to examine, adjudicate, and decide a case filed under the pretext that the law does not exist or is not clear, but rather obliged to examine and adjudicate it". For the sake of truth and fairness the judge is obliged to examine, adjudicate, and decide the objections raised by the defendant or legal counsel despite the circumstances of the rechtvacuum.

The request to bring in such a favorable witness, according to M. Yahya Harahap, must be made with reasonable consideration, not with a view to slowing down the course of the examination or done in bad faith to play with the examination. When the witness is difficult to find justification for his testimony, then the favorable witness has nothing to do with the case, then bad faith to play with such an examination may abort the investigator's obligation to examine and summon them as provided in Article 116 paragraph (4) of the Criminal Procedure Code.

Furthermore, according to M. Yahya Harahap, in his book Civil Procedural Law on Lawsuits, Trials, Seizures, Proofs and Court Decisions, PT. Rays Grafika, 2016, p. 661-665, stating the Meaning of Testimonium De Auditu i.e., the testimony of a witness
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sourced from a story or statement submitted by another person, it can be explained that the testimony of witness Iman bin Nosan and witness Manih, which essentially explains that based on the confession of the Son of Sri Wulandari, and not from another person but from the victim himself, the information is not included in the Testimonium De Auditu. It cannot be justified, then, that the testimony of witness Iman bin Nosan and witness Manih has relevance to the criminal case in progress, as the Public Prosecutor has outlined in the facts of law in the Public Prosecutor's affidavit.

Furthermore, M. Yahya Harahap also explained related to Testimonium De Auditu in practice, Application of Testimonium De Auditu in judicial practice namely; it is generally rejected as evidence, and constructed as a presumption, which is considered objectively and rationally. So in conclusion, Testimonium De Auditu is generally used as an objective and rational presumption.

Testimony of Testimonium De Auditu related to the Decision of MK 65/PUU-VIII/2010 on the expansion of the meaning of testimony which includes witnesses Testimonium De Auditu, Lecturer of Criminal Procedure Law FHUI Flora Dianti in the article Advocate Ragu Investigator Obey the Verdict of the Constitutional Court explained that there are things that need to be clarified from the verdict of the Constitutional Court, among others, whether the mitigating witnesses referred to by the Constitutional Court in its verdict only include alibi witnesses or also witnesses Testimonium De Auditu (witnesses who do not hear, see, and experience themselves). So with such an importance the Investigator, Public Prosecutor, and Judge are obliged to carry out their obligations to carry out the due process of law by adhering to the principles of human rights, because in the end the organizer of the judiciary is to find justice based on the Almighty Godhead.

Proof of suspicion or indictment is not only to prove whether the suspect or defendant committed or was involved in a certain criminal act, but also includes proof that a criminal act actually occurred. In the context of proving whether a criminal act/act actually occurred, and proving whether the suspect or defendant actually committed or was involved in the crime/act in question, the role of the alibi witness becomes important, even if he does not hear for himself, he sees for himself and he experiences himself. As for the pleadings other than and the rest, they are unwarranted. So the definition of witnesses Article 1 number 26 and number 27, Article 65, Article 116 paragraph (3) and paragraph (4), Article 184 paragraph (1) letter a of the Criminal Procedure Code is not interpreted contrary to the 1945 Constitution as long as the definition 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 the Criminal Procedure Code, is not interpreted to include "a person who gives information in the context of investigating, prosecuting, and prosecuting a criminal act that he does not always hear for himself, he sees for himself and he experiences himself." As for the pleadings other than and the rest, they are unwarranted. So the definition of witnesses Article 1 number 26 and number 27, Article 65, Article 116 paragraph (3) and paragraph (4), Article 184 paragraph (1) letter a of the Criminal Procedure Code, is not interpreted contrary to the 1945 Constitution, if the witness is interpreted as "not always listening to himself". It is appropriate in the context of proving the presumption is to prove whether the suspect or defendant actually committed or engaged in the criminal act/act in question clearly and in detail, if it cannot achieve this purpose then a witness who "does not always listen to himself" his testimony cannot be accepted as sufficient evidence.

Based on Article 108 paragraph (1) of the Criminal Procedure Code, it can be interpreted that what the witness explains is that which can be seen and experienced by himself. Article 108 paragraph (1) of the Criminal Procedure Code is only formulated as a "right". Rights are something that can be used or not, in contrast to obligations that require or require everyone who experiences, sees, witnesses and or is a victim of a criminal act to report or complain to an investigator and/or investigator either orally or in writing.

De auditu's testimony is not allowed as evidence in proving criminal proceedings but should also be heard by the judge to reinforce the judge's belief in other evidence. Similarly, with Andi Hamzah's statement, according to Amin, giving evidence to de auditu's...
testimonies means that the conditions or elements heard, seen, and experienced by oneself are no longer held, thus obtaining also indirectly the power of evidence of the particulars uttered by a person outside of oath.

Similarly, Wiryono Projodikoro's opinion is also opposed to the use of de auditu witness testimony as valid evidence by stating that:

The judge is prohibited from using the evidence of a witness de auditu testimony, namely about a circumstance in which the witness only heard the occurrence of the criminal event from another person. This kind of prohibition is not appropriate, but it should be noted that if any witness who explains that he has heard of a situation from another person, this kind of testimony cannot always be simply set aside. It is possible that hearing an event from another person may be useful for the preparation of a series of proofs against the defendant. Witnesses de auditu are not evidence. The scope of the weight point of examination of witnesses as evidence is aimed at problems related to evidence, namely the requirement for the validity of witness testimony.

Witness testimony is valuable as evidence because not all witness statements have value as evidence. The testimony of witnesses who have value as evidence is information that is in accordance with what is stated in Article 1 number 27 of the Criminal Procedure Code. From the testimony of the appropriate witness in the Article it is connected with Article 185 paragraph (1) of the Criminal Procedure Code. Therefore, conclusions can be drawn from the two articles, namely first, any witness testimony beyond what he heard, saw or experienced himself in a criminal event that has occurred, information given outside of his own hearing, vision, or experience of a criminal event that has occurred, "cannot be used and judged as evidence". The aforementioned witness testimony would not have the strength of evidentiary value in a criminal case, the second, regarding "testimonium de auditu". Testimonium de auditu is information obtained from others.

The purpose of criminal procedural law is to seek and obtain material truth. Truth is the complete truth of a criminal case by presenting the provisions of the criminal procedure law honestly and precisely with the aim of finding an offender who can be charged with having committed a violation of the law, and further requesting an examination and judgment from the court to find whether it is proved that a criminal act has been committed and whether the person charged is to blame.

The decision of the Constitutional Court No. 65/PUU-VIII/2010, has brought the consequences of updating the criminal procedure law by expanding the definition of witnesses and witness statements. For the understanding and renewal of criminal procedural law, no clear meaning is found in each reference. However, for the requirements for the renewal of the criminal procedural law which is summarized in a target for updating the criminal procedural law. The target of updating the criminal procedure law must be focused on 4 (four) sectors, namely (Abdurrahman, 1980: 3):
1. Renewal of the structure/order of criminal procedural law;
2. Updating the material/content of the criminal procedure law;
3. Renewal of the implementing apparatus;
4. Acceptance attitude of society to the punishment of criminal procedure.

The Constitutional Court as the guardian of the constitution which has the authority of the sole interpreter, the guardian of the constitution, the interpreter of the constitution, the guardian of democracy, the protector of human rights, in parts 1 and 2 has outlined its decision to be final and binding. Final means that the Constitutional Court's decision immediately acquires permanent legal force from the moment it is pronounced and no legal remedy can be pursued. Binding means that the final nature of the Constitutional Court's decision in this Act includes also the binding force of law.

The description of the Constitutional Court's decision is that its judgment has the force of law binding on any person (erga omnes) not limited to the petitioner or the Government or the framers of the Act. The privilege of the Constitutional Court's decision is a juridical consequence of the Law's test of the 1945 Constitution, in which an Act is
abstract and generally binding. Constitutional review is to represent the legal interests of the whole society, in the form of the establishment of the constitution.

The decision of the Constitutional Court Number 65/PUU-VIII/2010 which has been final and binding since it was decided is final and binding and erga omnes, since the final and binding decision of the Constitutional Court Number 65/PUU-VIII/2010 has become a source of criminal procedural law regarding witnesses testimonium de auditu. (Steven Suprantio: 2014)

According to Munir Fuady, the use of witness testimonium de auditu depends on a case-by-case basis. If there is a strong belief in the truth of the witness testimonium de auditu, for example, the testimony can be included in the excluded group, the witness testimonium de auditu can be used as evidence. In the criminal procedural law can be recognized as evidence of clues.

Based on the facts of the trial from the results of research in Judgment No. 380/Pid.Sus/2022/PNCkr. A condition that can be seen from the criminal act of “Deliberately Inducing a Child to Have Intercourse with Him on an Ongoing Basis”. That the judge had his own considerations and was not bound by the testimony of the witness presented by the Public Prosecutor named Mr. Nadih, Witness Mr. Kunan no one saw firsthand the criminal events charged.

Based on the testimony of Witness Mr. Nadih and Witness Mr. Kunan is the testimony of witness testimonium de auditu, meaning that the witness only hears from the other party, both second party and third party, does not directly see the criminal event, can be used as evidence, and there must be a strong reason to believe the truth of the witness testimonium de auditu, because the testimony of the witness testimonium de auditu can be used as a clue. Where the testimony of the witness is reliable, reasonable (reasonable), and the testimony of the witness can be recognized as indirect evidence, namely through the evidence of clues, thus the testimony of the testimony de auditu is the information given by the witness regarding an event, not based on direct vision, but hearing from another person also called indirect testimony. The testimony of the testimony de auditu which is interpreted as a clue, the power of proof is the same as specified in the Criminal Procedure Code i.e. the power of proof is free, unbounded, the Panel of Judges is free to judge it to draw conclusions regarding the guilt of the accused based on the testimony, with the existence of instructions in the case a quo, the Panel of Judges obtains a conviction, that the actual fact that occurred in a quo criminal event is that the defendant has committed the criminal act in question.

Basically, the evidence of the testimony is not attached to the nature of the proof that is semourna, and it is not inherent in it the nature of the binding and decisive power of proof. Therefore, the evidence of witness testimony as valid evidence is free and imperfect and not decisive and non-binding. And it depends on the judge's judgment. The judge may accept or set aside the testimony of the witness. (Destiana, Elsa Shafira. "Review the value and strength of proof for the expansion of testimony de auditu witness testimony in child molestation cases (Elsa Syafira Destiana: 2019).

Constitutional Court decision No. 65/PUU-VIII/2010 recognizing witnesses testimonium de auditu in criminal justice is a reflection of the protection of the rights of suspects and defendants. protection and fulfillment of the rights of suspects and defendants is the main principle in the criminal procedure law, which is guaranteed its fulfillment 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 before the law by not holding a distinction of treatment recognized and upheld by Law Number 8 of 1981 concerning the Criminal Procedure Code.

Given the importance of this ruling to investigators, public prosecutors and judges are obliged to carry out their obligations to carry out the due process of law by adhering to the principles of human rights, because ultimately the administration of justice is to find justice based on the Almighty Godhead.

Bima Siregar explained that "the position of judges in the judiciary in Indonesia is placed as a digger, inventor, and creator of law and justice, not just a law maker and case breaker, as embraced by juridical positivism. He in his duty is obliged to formulate the
excavations and findings of legal values that live among the people into positive laws. Such a ruling is expected to approach the so-called as per the feelings of law and the value of justice.” (Sudirman, 2007:167)

Judges are obliged to rechtsvinding because there are legal circumstances of rechtvacuum. This argument is also in line with the provisions of Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states “The court is prohibited from refusing to examine, adjudicate, and decide a case filed under the pretext that the law does not exist or is not clear, but is obliged to examine and adjudicate it.” For the sake of truth and fairness the judge shall examine, adjudicate, and decide the objections raised by the defendant or counsel despite the circumstances of the recht vacuum.

This issue shows that in the future improvements need to be made to the Criminal Procedure Code. An interesting improvement is that in the Criminal Procedure Code Bill drafted by legal expert Andi Hamzah, the institution of Judge Commissioners has been developed as a substitute for pretrial institutions. (Hamzah, 2008 : 21)

CONCLUSION

The decision of the Constitutional Court, is final and binding and binding on everyone (erga omnes) because constitutional review is an abstract and generally binding test and aims to uphold the constitution, because it is binding on everyone including the Supreme Court and the judicial bodies under it. Therefore, it is influential for the court to consider, adjudicate, and decide with due regard to the decision of the Constitutional Court for the sake of upholding the principles of human rights of suspects and/or defendants.

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