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IMPLEMENTATION OF THE CONSTITUTIONAL COURT DECISION NUMBER 65/PUU-VIII/2010 IN THE CRIMINAL JUSTICE SYSTEM

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Abstract

The Constitutional Court Decision Number 65/PUU-VIII/2010“provides a new meaning regarding witnesses in the Criminal Procedure Code, by recognizing witnesses as testimonium de auditu. Since the decision was pronounced, the Constitutional Court's decision has come into force and is binding on everyone, especially for the process of investigation, prosecution and trial in court. However, in practice, the Constitutional Court's decision is not followed by judicial bodies under the Supreme Court, in the concrete case of the decision of the West Pasaman District Court No. 191/Pid.Sus/2019/PN Psb which does not consider and decide based on the decision of the Constitutional Court which has become part of the criminal procedural law. In fact, the Constitutional Court Decision Number 65/PUU-VIII/2010 should be legally binding on all.”

Keywords: ***Witness, Binding Power, Testimonium De Auditu***

INTRODUCTION

Article 24 paragraph (1) of the 1945 Constitution states that the judiciary power is an independent power to administer justice in order to uphold the law and justice. Then, in Article 24 paragraph (2) of the 1945 Constitution, it is stipulated that the actors of judicial power are the Supreme Court and the judicial bodies under it within the general judiciary, religious judiciary, military judiciary, and state administrative judiciary, as well as by a Constitutional Court.

The Constitutional Court is an institution established in 2003, and it is one of the independent actors of the judicial power. The establishment of the Constitutional Court is mandated by Article 24, paragraph (2) of the 1945 Constitution. The Constitutional Court has a vision of "Upholding the constitution in order to realize the ideals of a legal state and democracy for a dignified national and state life." The institution adheres firmly to the principles of transparency and public accountability. The purpose of its establishment is to serve as a check and balance with the Supreme Court and the lower courts, as well as the legislative and executive powers of investigative and prosecutorial agencies. With the abolition of the highest state institution's functions, the legislative, executive, and judicial functions are now assigned to institutions that hold equal status. The equality of the positions of state institutions regulated in the 1945 Constitution is to ensure that each state institution can exercise its authority without interference from other state institutions.

The Constitutional Court is a judicial institution that adjudicates certain cases within its jurisdiction to uphold law and justice based on the 1945 Constitution. The Constitutional Court has 4 (four) authorities and 1 (one) obligation, namely First, the Constitutional Court has the authority to adjudicate at the first and final level with a final decision to: test laws against the Constitution; Second, resolve disputes over the authority of state institutions granted by the Constitution; Third, decide on the dissolution of political parties, and Fourth, to decide disputes regarding the results of general elections. Whereas one (1) obligation is that the Constitutional Court is obliged to issue a decision on the opinion of the People's Representative Council regarding alleged violations by the President and/or Vice President according to the Constitution. The violations referred to as mentioned and regulated in the provisions of Article 7A of the 1945 Constitution, namely committing legal violations in the form of treason against the state, corruption, bribery,“other criminal acts, or disgraceful conduct, and/or no longer meeting the requirements as President and/or Vice President as referred to in the 1945 Constitution. According to Jimly Asshiddiqie, the

presence of the Constitutional Court in the state structure has implications for changes in the constitutional system of the Republic of Indonesia. At this time, the Constitutional Court has issued many important rulings to uphold the constitution. One of the monumental decisions ever made was Decision Number 65/PUU-VIII/2010 regarding the review of Article 1 number 26 and number 27 in conjunction with Article 65 in conjunction with Article 116 paragraphs (3) and (4) in conjunction with Article 184 paragraph (1) letter a of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) against Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution. If we examine the part of the decision's ruling, the panel of judges of the Constitutional Court provided an expanded meaning of a witness as regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). In the decision, the intended expansion of witnesses refers to the recognition of testimony from witnesses who have heard about an event (testimonium de auditu) as valid witness testimony.

In making that decision, the Constitutional Court, in its legal considerations, provided an opinion on "...the context of proving the suspicion or accusation whether the suspect or defendant committed or was involved in a certain act or crime, proving whether a crime actually occurred or did not occur." In this regard, the Constitutional Court opines that in proving whether a crime truly occurred or did not occur, the role of an alibi witness becomes very important, even though the alibi witness did not hear, see, or personally experience the act or crime committed by the suspect or defendant.

Article 1 numbers 26 and 27 of Law Number 8 of 1981 concerning the Code of Criminal Procedure states that a witness is a person who can provide testimony for the purposes of investigation, prosecution, and adjudication regarding a criminal case that they have heard, seen, and experienced themselves. Meanwhile, witness testimony is one of the pieces of evidence in a criminal case that consists of statements from the witness. regarding a criminal event that he heard himself, saw himself, and experienced himself, citing his reasons and knowledge. Witness testimony is one of the pieces of evidence that has strong probative power, especially in efforts to prove the material acts of the criminal perpetrator. If the witness passes away before the case is brought to the District Court by the Public Prosecutor, it is highly likely that the Prosecutor will no longer be able to file an indictment.

In the understanding of witnesses in the Criminal Procedure Code (KUHAP), it does not include alibi witnesses and clearly does not recognize other types of witnesses that can be classified as witnesses favorable to the defendant. The Constitutional Court opines that "the significance of a witness does not lie in whether they saw, heard, and personally experienced a criminal event, but rather in the relevance of their testimony to the criminal case being processed.""

In the decision,"the Constitutional Court considered the provisions of Article 65 in conjunction with Article 116 paragraphs (3) and (4) of Law Number 8 of 1981 concerning the Criminal Procedure Code, stating that "it must be interpreted as being applicable not only at the trial stage in court but also at the investigation stage." The removal of the right of the suspect or defendant to present (summon and examine) witnesses and/or experts who are beneficial to the suspect or defendant during the investigation stage, and only summoning beneficial witnesses during the trial stage, constitutes a violation of Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution." The Constitutional Court in its decision, ruled:

1. Declaring 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 Criminal Procedure Law (State Gazette of the Republic of Indonesia Year 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) are contrary to the 1945 Constitution of the Republic of Indonesia insofar as the understanding of a witness 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 Law (Supplement to the State Gazette of the Republic of Indonesia Number 3209) is not interpreted to include "a person who can provide information in the context of investigation, prosecution, and adjudication of a criminal act that is not always heard by him, seen by him, and experienced by him".
2. Declares 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 Criminal Procedure Law (State Gazette of the Republic of Indonesia Year 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) do not have binding legal force as long as the definition of a witness in Declares 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 Criminal Procedure Law (State Gazette of the Republic of Indonesia Year 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) is not interpreted to also include "a person who can provide information in the context of investigation, prosecution, and adjudication of a criminal act that he does not always hear himself, see himself, and experience himself."

Article 10 of Law Number 24 of 2003 concerning the Constitutional Court states that the decisions of the Constitutional Court are binding and final. If we look at the explanation of Article 10 of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 on the Constitutional Court, it is a decision that directly obtains permanent legal force from the moment it is pronounced and no legal remedies can be pursued. The final nature of the Constitutional Court's decision in this Law also includes binding legal force (final and binding).

In its implementation, the Constitutional Court's decision raises several issues related to the absence of provisions in the legislation governing the binding nature of the Constitutional Court's decisions for everyone, and there are also no provisions requiring the Supreme Court and the lower courts to comply with the Constitutional Court's decisions. This condition is evident in the decision Number 191/Pid.Sus/2019/PN Psb dated February 26, 2020." In the verdict of case number"191/Pid.Sus/2019/PN Psb, the defendant was acquitted of all charges (vrijspraak). In the trial, evidence in the form of witness testimonies was presented, consisting of the Victim's Child, followed by the Victim's Child's father and mother, and the Victim's Child's neighbor. However, the Judge, in his consideration, opined that the witnesses presented in the trial were only considered as de auditu witnesses.

In his consideration, the Judge opined that the testimonies presented in the trial stood independently, namely the testimony of the Victim's Child and the testimony of the Defendant, where these testimonies contradicted each other regarding the alleged immoral act charged by the Public Prosecutor. Therefore, the minimum proof required, which is 2 (two) valid pieces of evidence in this case, has not been fulfilled to instill the conviction that the Defendant is indeed guilty of committing the act as stated in the Public Prosecutor's indictment. The panel of judges in that decision did not consider the Constitutional Court Decision Number 65/PUU-VIII/2010, which has binding legal force at all."

LITERATURE REVIEW

Constitutional Court Decision No. 65/PUU-VIII/2010 has brought significant changes to the evidence system in Indonesia, particularly with regard to the definition of witnesses and testimony. This can be seen in the many studies that focus on the Constitutional Court's decision as their main topic. The research conducted by Muhammad Johan Aria Putra from STIH Sumpah Pemuda Postgraduate Program examines the legal analysis of the implementation of the Constitutional Court Decision Number: 65/PUU-VIII/2010 related to the validity of testimonium de auditu witness evidence in criminal cases and KUHAP. This study aims to analyze how the implementation of the Constitutional Court Decision No. 65/PUU-VIII/2010, which expands the meaning of witnesses and witness testimony, as well as its implications for the validity of testimonium de auditu evidence in criminal cases. This research uses a normative legal approach to explore the harmony between KUHAP, the evidence system, and the Constitutional Court's decision in assessing the relevance of mitigating witnesses. The research also emphasizes that law enforcement agencies are obliged to implement decisions that are final and erga omnes (applicable to all). It was also found that the Constitutional Court's decision should consider internationally accepted legal principles so that it can be implemented without debate, and emphasize the importance of due process of law and procedural aspects in obtaining evidence (Putra, Busroh and Utoyo 2023).

Similarly, Nedi Gunawan Situmorang from the Master of Law at Esa Unggul University conducted research on the legal status of testimonium de auditu as valid evidence before and after the Constitutional Court Decision No. 65/PUU-VIII/2010. This research aims to find out how the existence of testimonium de auditu is related to the power of evidence in Indonesia and the legal position of the power of evidence of testimonium de auditu as valid evidence after the Constitutional Court Decision Number 65/PUU-VII/20102. This research found two different situations in dealing with testimonium de auditu. Both situations are related to the legal theory of evidence adopted in Indonesia, namely negative wettelik bewijstheorie or evidence based on negative laws, where in addition to using the evidence contained in the law, it also uses the belief of the judge.

The research concluded that the existence of testimonium de auditu in Indonesia both before and after the Constitutional Court Decision No. 65/PUU-VII/2010 regarding the evidentiary power in criminal cases does not have binding legal force on the consideration of judges in deciding a criminal case in Indonesia. The research also shows that the legal status and evidentiary power of testimonium de auditu or hearsay evidence as valid evidence can be more effectively applied in the process of investigation, prosecution and trial. Another study was conducted by Deo Randy of Brawijaya University, who examined and analysed the widening of the definition of a witness after the Constitutional Court's decision number 65\/PUU-VIII\/2010 against the Bangil District Court's decision number 912\/PID\/B\/2011\/PN.BGL. The focus was on cases where there was testimony from witnesses who did not directly see and hear the crime, but only knew from the victim's story. The research found that following the widening of the definition of witnesses by the Constitutional Court decision, in the Bangil District Court case, the victim's father,

who is a relative in the ascending line, and the victim's brother are accepted as witnesses. Judges can consider the testimony of witnesses who did not see, hear or experience the events experienced by the victim. The results also show that testimony that may incriminate the accused can be accepted by the judge as long as the witness provides relevant information related to the crime that occurred. This represents an important shift in Indonesia's criminal evidence system, which previously strictly limited the definition of witnesses to those who saw, heard or experienced an event themselves (Riandy, Navianto and Endrawati, 2018).

METHOD

This research uses normative juridical research methods.“In other words, this research is based on library legal materials or secondary legal materials as the basis for research. This research also searches for literature and regulations relevant to the problem under study. Statute Approach is a method chosen by using legislation and regulations as well as a conceptual approach. The conceptual approach is an approach based on theories and perspectives developed in legal science. Theory or doctrine will provide an understanding of the relevant laws, concepts, and principles to explain the concept. The type of data collection technique uses secondary data, the type of data collection that comes from official documents, books related to the research subject, reports, theses, theses, dissertations, and laws and regulations.”

RESULTS AND DISCUSSION

History of the Formation of the Constitutional Court

The establishment of the Constitutional Court as a separate institution is due to the need for a court that specifically conducts tests on legislative products (in Hans Kelsen's terms, statute and customary law) that are in conflict with the constitution (the basic law). This idea originated from Prof. Hans Kelsen, a renowned professor from the University of Vienna, who proposed the establishment of an institution named 'Verfassungsgerichtshof' or the Constitutional Court. Kelsen's idea was then unanimously accepted and adopted into the 1920 Constitution, which was enacted at the Constitutional Convention on October 1, 1920, as the Federal Constitution of Austria.
The Constitutional Court itself is one of the fruits of the amendment to the 1945 Constitution, and its establishment will certainly lead the constitution towards a more democratic direction. The amended Constitution has clarified that the existence of Indonesian citizens is recognized as free individuals who possess fundamental rights, in addition to fundamental duties. That means the amended Constitution views citizens as individual beings as well as social beings. In the 1945 Constitution, the existence of the Constitutional Court is regarded as a guardian of the constitution that is useful for upholding the foundations of constitutionalism. Thus, as a form of respect for constitutionalism, the Constitutional Court has limited authority. The Constitutional Court has limits to its authority as one of the judicial institutions, which is a form of checks and balances.

Before Independence, the idea of the importance of a constitutional court or Constitutional Court had already existed in the history of Indonesia's constitutional law. The idea emerged when BPUPKI discussed the Indonesian Constitution. The idea reemerged when the draft judicial power law was discussed and later enacted as Law Number 14 of 1970 on the Principles of Judicial Power. The idea of establishing the Constitutional Court during the reform era began to be voiced during the second session of the Ad-Hoc I Committee of the MPR RI Working Body (PAH I BP MPR), which took place after a comparative study on constitutions in twenty countries by all members of the MPR RI Working Body in March-April 2000. This idea did not emerge during the first amendment of the 1945 Constitution of the Republic of Indonesia, and no faction in the MPR had proposed it. The idea only emerged after a comparative study was conducted. Even so, in the annual session held by the MPR in August 2000, the idea of forming the Constitutional Court was still in the form of several alternative drafts and was not yet final.

The history of the establishment of the Constitutional Court (MK) began with the adoption of the idea of the Constitutional Court (MK) in the constitutional amendment carried out by the People's Consultative Assembly (MPR) in 2001, which was formulated in the provisions of Article 24 paragraph (2), Article 24C, and Article 7B. The 1945 Constitution, which is the result of the third amendment, was ratified on November 9, 2001. The idea of establishing the Constitutional Court is one of the new developments in legal and state thought that emerged in the 20th century. ” The Constitutional Court is a state administrative court whose authority is enshrined in the 1945 Constitution. These powers are outlined in Article 24C paragraph (1) and clarified in Article 10 paragraph 1 of Law Number 24 of 2003. In those two articles, it is stated that the Constitutional Court has 4 (four) authorities, namely adjudicating at the first and final level with decisions that are final for:

1. Testing Laws against the Constitution;
2. Deciding disputes over the authority of state institutions whose authority is granted by the Constitution;
3. Deciding on the dissolution of a political party;
4. Deciding disputes regarding the results of the general election;

The Constitutional Court also has one (1) obligation contained in Article 10 paragraph (2) of Law Number 24 of 2003, namely "obliged to render a decision on the DPR's opinion that the President and/or Vice President are suspected of committing legal violations in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts, and/or no longer meet the requirements as President and/or Vice President as referred to in the 1945 Constitution of the Republic of Indonesia.

The Constitutional Court's Decision is Final and Binding

The Constitutional Court, as one of the actors of the judiciary according to the provisions of Article 24C paragraph (1), is authorized to adjudicate at the first and final levels, with its decisions being final, to test laws against the Constitution. This Constitutional Court decision is final and binding. Further explanation regarding the final and binding nature of the Constitutional Court's decisions is regulated and explained in the explanatory section of Article 10 paragraph (1) of Law Number 8 of 2011 on the Amendment of Law Number 24 of 2003 on the Constitutional Court, as contained: "The decision of the Constitutional Court immediately obtains permanent legal force upon being pronounced and no legal recourse can be pursued." If Article 10 paragraph (1) of the Constitutional Court Law is interpreted systematically, there are several key parameters that describe the nature of the Constitutional Court's Decision, namely:

1. The validity period of a final Constitutional Court decision is counted from the time it is read or pronounced. In other words, it can be immediately enforced at that moment;
2. The final nature referred to carries legal consequences in the form of the unavailability of further legal remedies or the absence of a correction mechanism for the decision.
3. The "final and binding" nature of the Constitutional Court's Decision contains the principle of erga omnes because it creates a legal obligation to comply with the decision, which is not only binding on the parties involved but also on all elements of state institutions and society.

Based on the final and binding nature of the Constitutional Court's decision, which requires everyone to submit and comply with it, the binding force of the Constitutional Court's decision is also understood to adhere to the principle of "erga omnes," which comes from Latin and means "applicable to everyone (toward every one)."

Witness Testimony de Auditu in Criminal Proceedings

Article 1 number 27 of Law Number 8 of 1981 concerning the Criminal Procedure Code states that witness testimony is one of the pieces of evidence in criminal cases, consisting of the witness's account of a criminal event that they heard, saw, and experienced themselves, along with the reasons for their knowledge. The legislature, as the lawmaker, determinatively stipulates that only witnesses who see, hear, and experience are considered evidence in criminal cases. Witness testimony outside of what they personally heard in the criminal event or outside of what they saw or experienced in the event or act of crime that occurred, testimony given outside of their hearing, seeing, or personal experience regarding a criminal event that occurred, cannot be used and assessed as evidence.

Since the Constitutional Court issued Decision Number 65/PUU-VIII/2010, the meaning of a witness has been expanded from the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code by the acceptance or recognition of a witness testimony de auditu in criminal proceedings. The Constitutional Court considers that the relevance of testimony to the criminal case being processed is very important regardless of whether the witness saw it themselves or not, heard it themselves or not; and experienced the crime themselves or not, because It is the duty of investigators, public prosecutors, and judges to summon and examine witnesses who are favorable to the defendant. This is an obligation that must be fulfilled as it is part of and the application of the principle of due process of law in the criminal justice process and an effort to realize fair legal certainty in a state of law.

In the Constitutional Court Decision Number 65/PUU-VIII/2010, which accepts testimony de auditu witnesses in criminal proceedings, it is a form of protection for the rights of suspects and defendants. The protection and fulfillment of the rights of suspects and defendants are the main principles in criminal procedural law, guaranteed by Article 28D paragraph (1) of the 1945 Constitution, Article 3 paragraph (2) of Law Number 39 of 1999 on Human Rights, and the principle of equal treatment before the law.

Binding Force of Constitutional Court Decisions

One of the powers held by the Constitutional Court is the authority to conduct a constitutional review of laws against the 1945 Constitution. The term that will be used in this writing is constitutional review to distinguish it from judicial review conducted by the Supreme Court. Judicial review itself means the examination conducted by the judicial institution. The Constitutional Court has the authority to examine and adjudicate a provision of law against the 1945 Constitution. If it is found that a provision is indeed in conflict, the Constitutional Court can issue a ruling to annul the provision in question and declare it no longer having permanent legal force. The Supreme Court has the authority to examine and adjudicate legislative provisions against the law. If it is found that there is a provision within it that is contradictory, the Supreme Court can issue a ruling to annul the said provision and declare it to have no permanent legal force (judicial review).

Article 51 paragraph (3) of Law Number 24 of 2003 concerning the Constitutional Court regulates two types of constitutional review, namely:

a. The formation of laws does not comply with the provisions based on the 1945 Constitution; and/or (formal review)
b. The substance of the articles, sections, and/or parts of the law is considered contrary to the 1945 Constitution (material review).

The two types of tests aim to determine whether a law (formal and/or material) is in conflict with the 1945 Constitution. The authority of constitutional review makes the Constitutional Court a state institution that ensures there are no longer any legal provisions that deviate from the constitutional corridor. The provisions of Article 10 of Law Number 24 of 2003 concerning the Constitutional Court state that the decisions of the Constitutional Court are final and binding. The explanation of Article 10 paragraph (1) of Law Number 8 of 2011 concerning amendments to Law Number 24 of 2003 on the Constitutional Court explains that the Supreme Court's decision immediately obtains permanent legal force from the moment it is pronounced and no legal remedies can be pursued. This means that the final nature of the Constitutional Court's decision in this law also includes binding legal force. The provision indicates that there is no opportunity to pursue further legal remedies after that decision, unlike regular court rulings which still allow for cassation and judicial review. “The Constitutional Court's decision is legally binding on everyone, and the argument can be made by referring to the type and nature of the Constitutional Court's decision.

The Constitutional Court's decisions can be categorized into two types, namely:

1. The Constitutional Court's ruling that annulled the norm; or
2. The Constitutional Court's decision that interprets the law in accordance with the original intent of the 1945 Constitution.

The provision of Article 59 paragraph (2) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court applies to two types of Constitutional Court decisions, namely "If amendments to the tested law are necessary, the DPR or the President shall immediately follow up on the Constitutional Court's decision as referred to in paragraph (1) in accordance with the legislation.” Follow-up on the Constitutional Court's decision is only necessary when a recht vacuum legal event occurs, whereas for Constitutional Court decisions that provide an interpretation of the law in accordance with the original intent of the 1945 Constitution, the DPR or the President is given the freedom to follow up on the Constitutional Court's decision. Legally, if the DPR or the President does not follow up on the Constitutional Court's decision, it automatically becomes a law that is erga omnes.

The constitutional law system in Indonesia, which applies the principles of the rule of law, requires that the 1945 Constitution of the Republic of Indonesia be regarded as the "supremacy of law," so the paradigm that should be firmly upheld by all components of the state is the obligation to adhere to the constitution. Thus, one of the benchmarks of good citizenship is the realization of obedience to the constitution itself, including in this case, submission and adherence to the decisions of the Constitutional Court. Submitting to and complying with the Constitutional Court's decisions is an obligation that cannot be disputed by anyone, including all state institutions within the constitutional system in Indonesia. This paradigm is based on the constitutional authority of the Constitutional Court (MK) which, according to the 1945 Constitution of the Republic of Indonesia, incorporates the principle of checks and balances, thereby able to place all state institutions on an equal footing before the law to achieve balance in the context of state administration. The issue of implementing the Constitutional Court's decision, which is final, binding, and applicable to all parties (erga omnes), essentially refers to the factor of non-compliance by the parties involved, whether directly or indirectly, with the Constitutional Court's decision itself. In fact, the purpose of the Constitutional Court (MK) within the Indonesian constitutional system is to uphold the values of constitutionality as enshrined in the 1945 Constitution of the Republic of Indonesia. This was conveyed by Anwar

Usman, the Chief Justice of the Constitutional Court, during his presentation on January 28, 2020, that there are approximately 22.01% or 24 Constitutional Court Decisions that not complied with to the extent that it should be declared as a form of rebellion against the constitution.

The Influence of the Constitutional Court Decision Number 65/PUU-VIII/2010 on the Decision in Case Number 191/Pid.Sus/2019/PN Psb

The uniqueness of the Constitutional Court's decision is that its ruling has binding legal force on everyone (erga omnes) and is not limited to the petitioner, the government, or the legislature. That the decision of the Constitutional Court is a legal consequence of the examination of laws against the 1945 Constitution, whereby a law is abstract in nature and binding in general.

The Constitutional Court Decision Number 65/PUU-VIII/2010 has become a source of criminal procedural law regarding witnesses of testimonium de auditu. In that decision, it has provided an interpretation of Article 1 numbers 26 and 27; Article 65; Article 116 paragraphs (3) and (4); as well as Article 184 paragraph (1) letter a of Law Number 8 of 1981 on Criminal Procedure Code in accordance with the original intent of the 1945 Constitution, namely:

a. The definition of a witness contradicts the 1945 Constitution as long as it is not interpreted to include "a person who can provide information in the context of investigation, prosecution, and adjudication of a criminal act that is not always heard, seen, and experienced by themselves."
b. The definition of a witness does not have binding legal force as long as the definition of a witness is not interpreted to include "a person who can provide information in the context of investigation, prosecution, and adjudication of a criminal act that he does not always hear himself, see himself, and experience himself."

The Constitutional Court believes that the significance of a witness lies in the relevance of their testimony to the criminal case being processed, not in whether they saw, heard, or personally experienced the criminal act. Consequently, Investigators, Public Prosecutors, and Judges are obliged to know and comply with the Constitutional Court's decision, and the Panel of Judges in the a quo case is required to examine, adjudicate, and consider it.

However, the fact is that the Constitutional Court's decision Number 65/PUU-VIII/2010 was not considered by the Panel of Judges in case number 191/Pid.Sus/2019/PN Psb as witness evidence and was only assessed as a de auditu witness."

CONCLUSION

The decision of the Constitutional Court is final and binding for everyone (erga omnes) because constitutional review is an abstract and generally binding examination aimed at upholding the constitution, and therefore it is also binding on the Supreme Court and the judicial bodies under it. Therefore, it is mandatory for the court or judges to consider and pay attention to the Constitutional Court's decision in order to uphold justice.

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