

自證人之本質論證人之拒絕證言權 與法律效果

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摘 要

檢察官於偵查中欲以證人為法定證據方法而向法院起訴時，須由檢察官命該被告以外之人具結而成為證人，若有得拒絕證言之事由時，檢察官必須予以告知；倘該證人於審判中進行交互詰問前，法院亦應告以得拒絕證言之權利，避免使證人在不知其有得拒絕證言之狀態下而為供述。本文認為，應明確規範證人為法定證據方法之要求、明定證人證述之任意性係其證詞證據能力之要件、建立教示義務之法定程序及違反之法律效果及界定拒絕證言權適用之範圍，以解決證人制度之問題。

Nature of the witness to view the right to refuse testimony and its legal effect

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Abstract

Prosecutors may feel like considering a witness as legal evidence and further appeal to the court after investigation. Under this situation, the individuals other than any defendant must sign an undertaking as a witness. If the individuals find any excuses and refuse testimony, prosecutors must notify them. Before interrogation during a trial, the side of the law court should inform the individuals that they can refuse testimony without reasons, which avert the witness to make statements under the situations of not knowing the rights in the court. This study indicates that the laws should clearly regulate requirements that consider a witness can be legal evidence. Besides, stipulating a witness to express any statements arbitrarily can be an essential condition to showing the ability of evidence. In order to solving the problems of witness system, the study posits that judicial system should establish the legal procedure for related obligations of being a witness, response to violate legal effects and define the scale of the speaking right for a witness.