

The Crown Witnesses Objectivity in Evidence System of Indonesian Criminal Law

By Yahman Yahman



The Crown Witnesses Objectivity in Evidence System of Indonesian Criminal Law

Yahman¹, Dossy Iskandar Prasetyo², Ina Rosmaya³, Ahmad Hidayat⁴,
Kunarso⁵, Azizul Hakiki⁶

Abstract: In criminal case, defendants who jointly commit a criminal act can be used as witnesses between one another, called crown witnesses. The function of witnesses in every criminal case is very crucial since their statement are able to determine the judge's decision, which every witness statement always has great attention both by the legal actors involved in the trial and by legal observers. This research is normative juridical research through a statutory case approach to find out whether the presence of a crown witness is not contrary to the objectives of the law and how the legal protection of crown witnesses in corruption crimes.

Keywords: Criminal Procedure Code; Evidentiary System; Supreme Court Decision of Republic Indonesia; Witness

¹ Bhayangkara University of Surabaya, Indonesia, Address: Jl. Ahmad Yani Frontage Road Ahmad Yani No.114, Ketintang, Kec. Gayungan, Surabaya, Jawa Timur 60231, Indonesia, Corresponding author: yahmanhukum123@gmail.com.

² Bhayangkara University of Surabaya, Indonesia, Address: Jl. Ahmad Yani Frontage Road Ahmad Yani No.114, Ketintang, Kec. Gayungan, Surabaya, Jawa Timur 60231, Indonesia.

³ Bhayangkara University of Surabaya, Indonesia, Address: Jl. Ahmad Yani Frontage Road Ahmad Yani No.114, Ketintang, Kec. Gayungan, Surabaya, Jawa Timur 60231, Indonesia.

⁴ Bhayangkara University of Surabaya, Indonesia, Address: Jl. Ahmad Yani Frontage Road Ahmad Yani No.114, Ketintang, Kec. Gayungan, Surabaya, Jawa Timur 60231, Indonesia.

⁵ Bhayangkara University of Surabaya, Indonesia, Address: Jl. Ahmad Yani Frontage Road Ahmad Yani No.114, Ketintang, Kec. Gayungan, Surabaya, Jawa Timur 60231, Indonesia.

⁶ Bhayangkara University of Surabaya, Indonesia, Address: Jl. Ahmad Yani Frontage Road Ahmad Yani No.114, Ketintang, Kec. Gayungan, Surabaya, Jawa Timur 60231, Indonesia.

1. Introduction

The placement of witness testimony in the first order of five valid pieces of evidence indicates its importance in settlement of criminal cases related to the evidentiary system adopted by Indonesian criminal procedure law, called the negative system (*Negative wettelijk*). It is the proof system before the court for the sentence can be imposed since the judge examines the material truth. This is different from civil law, which examines the formal truth; in criminal law, witness testimony is greatly influenced by the judge's decision (Fuady, 2006), in Article 184 of the Criminal Procedure Code; it must be strictly by the facts, which means that it is not manipulated (Andi Hamzah, 2008b). The witness is important in all stages of investigation activities, from the investigation of the criminal activity to the judge's decision in court. According to the law, a witness is a person who can provide information for investigation, prosecution, and trial of a criminal case that hears, sees, and experiences by himself. In contrast, witness testimony is a piece of evidence in a criminal case in the form of a statement from a witness regarding the criminal act. The existence of a witness is crucial in judging the criminal case. The legal apparatus will be difficult to arrest the perpetrator of the criminal act when no one hears and experiences the occurrence of the criminal act itself. In addition, the same difficulties will be experienced by police when someone can be a witness but cannot provide a statement.

Objectivity comes from a philosophical term known in 1620: "Consideration of the relationship between something and its object." Objectivity was also formed from a Latin term medieval times called *objectives*. Meanwhile, *objectivity*, according to KBBI, is "An honest attitude, not influenced by personal or group opinions and considerations in making decisions or actions". Objectivity in science, as theoretical knowledge, has a higher degree of certainty than objectivity in ethics, which is essentially an issue of rational accountability to truth or evaluating truth by the human intellect (Fakhrudin, 2017). An objective statement is an impartial statement that conveys facts about something not colored by the speaker's previous experiences, preconceptions, perceptions, wishes, or knowledge. As a result, the statement is autonomous and transcends the thoughts of specific individuals (DosenSosiologi.Com, 2023).

A suspect is a person who is reasonably suspected of being a perpetrator of a criminal act because of his action or circumstances. At the same time, a defendant is a suspect charged, examined, and tried in court (Andi Hamzah, 2008a). The Dutch *Wetboek van Strafvordering* does not distinguish between the terms suspect

and defendant (no longer using the terms *beklaagde* and *verdachte*) but only uses one term for both: *verdachte*. However, the definition of *verdachte* before prosecution and after prosecution is distinguished. The definition of *verdachte* before prosecution parallels the definition of suspect in the Indonesian Criminal Code. The accused is a suspect who is prosecuted, examined, and tried in court, according to Article 1 point 15 of the Criminal Procedure Code. Based on adequate evidence, a suspect might be labeled as a defendant. As a result, a defendant is a suspect who is now being tried in court (Lembaga Bantuan Hukum Pengayoman, 2020). The suspect has had rights since he began to be examined; one of the rights that often raises the pros and cons of a legal bachelor is the right to answer or not answer questions by the investigator, public prosecutor, or judge. Suspects and defendants have the right to an explanation regarding the alleged matter, to freely provide information to investigators or judges, to interpreters, to receive legal assistance from one or more legal advisers and to choose their legal advisers, to demand compensation and rehabilitation, and to be free of the burden of evidence (Permatasari, 2022). The Criminal Procedure Code of Article 52 states, „In the examination by the investigator and the court, the suspect or defendant has the right to provide free information to the investigator or judge.

A witness is defined as someone who experiences, sees, hears, and experiences the occurrence of a criminal case. Based on Article 1 Point 26 of the Criminal Procedure Code, a witness is identified as a person who can provide information for the investigation, prosecution, and trial of criminal cases that he hears, sees, and experiences. A witness is a person who has seen or knows an event firsthand and is asked to be present at an event so that, if required, he may offer information to the judge verifying that the event occurred for the advantage of the accused or the accused (Tim Hukumonline, 2022). The evidence system regulates various kinds of evidence that can be used, the decomposition of evidence with several ways the evidence is used, and the judge must conduct his belief before the court (Alfitra, 2011). In criminal cases, the proof is always crucial since it provides a strong foundation and argument for public prosecutors to file charges when there is no statement from witnesses, victims, and perpetrators. Witnesses come in eight varieties: a charge witness, a de-charge witness, an expert witness, a victim witness, a hearsay witness, a crown witness, a whistleblower, and a justice collaborator (Tim Hukumonline, 2022). The defendant and other defendants who commit criminal acts can be used as witnesses between one another, and they are called crown witnesses and at other times becomes a defendant.

The function of witnesses in every criminal case is crucial since it also influences and determines the judge's decision on the case, and every witness testimony always has great attention both by legal actors involved in the trial and by the legal observers' community. Showing proof is the most significant approach used by judges to assess whether or not the defendant committed the conduct he was accused of or gained the grounds for making a judgment in settling a case to uncover the truth. A judge's judgment in a case must be found on his or her conviction and two of the five pieces of evidence. According to Article 183 of the Criminal Procedure Code "A judge may not impose a sentence on someone unless he obtains confidence that a crime has actually occurred and that the defendant is the one who is guilty of committing it" (Rozi, 2018). Based on the description above, the formulation of the problem in this research is as follows:

1. Is the presence of crown witnesses not contrary to the objectives of criminal law?
2. How is the legal protection of crown witnesses in criminal acts of corruption?

Future studies in this field should look at the effectiveness of legal safeguards for crown witnesses in corruption trials and whether these safeguards adequately protect their rights while allowing for the disclosure of critical evidence. Furthermore, additional studies might be conducted to investigate other ways or procedures for acquiring evidence in criminal trials that do not rely primarily on crown witnesses to address the possible infringement of human rights and fair trial standards.

The research gap in this area derives from the need to thoroughly examine the legal framework and practical use of crown witnesses in criminal proceedings, particularly in situations involving corruption. There is a dearth of comprehensive studies that objectively assess the effects of crown witnesses on the criminal justice process, defendant rights, and the overall efficacy of utilizing crown witnesses as evidentiary aids. More study is required to close this gap and better understand the advantages and disadvantages of using crown witnesses in criminal prosecutions.

1) 2. Research Methods

This research is normative or doctrinal legal research focusing on examining positive legal research regarding the problem formulation based on various aspects

such as theory, philosophy, structure¹³ composition, and explanations in each article. According to Soerjono Soekanto, research is a scientific activity based on certain methods, systematics and ideas that aim to study one or several specific legal phenomena by analyzing them (Tesis, 2013).

Legal material analysis is carried out by collecting primary, secondary, and tertiary legal resources, both in the form of papers and relevant laws and regulations, through a study of library materials or secondary materials. The technique for gathering legal materials in this study was done through library research, which included reading, studying, investigating, recognizing, evaluating, and progressively transferring legal documents. Literature study is gained through library research, which attempts to obtain concepts or theories, knowledge, and conceptual thinking in the form of laws, regulations, and other scientific works.

3. Discussion & Analysis

3.1. Crown Witnesses in Criminal Offenses

In implementing law enforcement, investigators must find and collect some evidence that will be used to explain the criminal²⁷ and charges the perpetrators or suspect to the court. Therefore, the witness has a crucial role in the investigation process to reveal and explain the criminal case itself.

Furthermore, presenting the crown witness itself is challenging since it is inseparable from several parties who are pro and contra to the presence of it in the trial. The justification for individuals opposed to crown witnesses' appearance is that their presence is contrary to human rights, which is more specifically related to the defendant's right in the criminal justice process. At the same time, the other party argues that crown witnesses have a crucial power in explaining the criminal act. For example, in corruption crimes involving several perpetrators who have built up a secretive relationship through personal, business, or associations, these relationships are often used to agree or conspire when facing the investigation process or prosecution to protect their rights.

² The term crown witness does not exist in the le²⁶ ation that governs criminal procedure law in Indonesia, called Law Number 8 of 1981 concerning criminal procedure law or commonly referred to as KUHP. However, crown witnesses are often found in the implementation of criminal procedure law, crown witnesses² Supreme Court Decision No.2437 k/Pid.sus/2011, which states: „although no exact

2 definition is given in Criminal Procedure Code regarding crown witnesses (*kroongetuide*), based on an empirical perspective, crown witnesses are defined as witnesses who are taken from one of the suspects or other defendants who jointly commit criminal acts. Although the authority given to the witness who is still a defendant is in the form of the prosecution dismissal of the case or the granting of a minimum punishment when the case is given to the court or he was forgiven for his mistakes (Willa Wahyuni, 2022).

11 The regulation of crown witnesses was originally regulated in Article 168 of the Criminal Procedure Code, explaining that parties who were joint defendants could not be heard and could withdraw as witnesses. In its development, a review of the understanding of crown witnesses as evidence in criminal cases was regulated in Jurisprudence of Supreme Court of Republic Indonesia Number:1986 k/Pid/1989, which explains that the Supreme Court of Republic Indonesia does not prohibit the prosecutor or public prosecutor from presenting a crown witness, on the condition that this witness' case file is not combined with the defendant who provided the statement when he was a defendant. The jurisprudence also emphasizes that the crown witness is „a friend of the defendant who has committed a joint criminal act submitted as a witness to prove the charges of public prosecutor; which the case is separated due to the lack of evidence.” It means that the use of crown witnesses is „permissible” on the condition that at certain times, such as:

- a. In the case of participation offense
- b. Lack of evidence
- c. Checked by *splitsing* mechanism.

Then, the Indonesian Supreme Court corrected its mistake by expressing a new statement on the use of crown witnesses, explaining, „the use of crown witnesses is contrary to Criminal Procedure Code which upholds the human rights.” 17 Furthermore, the following decision use crown witnesses, such as Jurisprudence: MARI, No.1174 k/Pid/1994, dated May 3, 1995; MARI, No.1952 k/Pid/1994, dated April 29, 1995; and MARI, No.1592 k/Pid/1995, dated May 3, 1995.

A crown witness has already been presented in court. For example, in the Bank Bali case, the former Governor of Bank Indonesia, Mr Syahril Sabirin, was present at the trial as a crown witness. In the case of the former chairman of the Corruption Eradication Commission, Mr Antasari Azhar, he presented the crown witness at the trial (Kurnia, 2019). In addition, the crown witnesses were presented as evidence only in criminal cases in the form of participation and when the case has been

separated (splitting) from the preliminary examination in the investigation process. The existence of crown witnesses in separate cases is based on the need for more evidence from the public prosecutor. It is regulated in Article 142 of the Criminal Procedure Code, which explains that „the public prosecutor receives one case file of several criminal acts committed by several defendants who are not included in the provisions of article 141, the public prosecutor may prosecute each defendant separately.” (Hamzah & Dahlan, 1985)

The regulation governing crown witnesses is regulated in the provisions of Article 168 letter (c) of the Criminal Procedure Code, which explains that parties who are joint defendants cannot be heard and can withdraw as witnesses. Jurisprudence, number 1986 k/Pid/1989, dated March 21, 1990, explains that presenting the crown witnesses as evidence in criminal cases conducted only in certain conditions. In addition, a crown witness is taken from one of the suspects or defendants. The following are the dimensions of the crown witness as follows:

a) The crown witness is a witness who can provide information for the investigation, prosecution and trial of a criminal case that he heard, saw and experienced by himself (Article 1, paragraph 26 of Criminal Procedure Code).

The crown witness is someone suspected of being a perpetrator of a criminal act because of his actions or circumstances based on preliminary evidence (Article 1 point 14 of the Criminal Procedure Code) or a suspect who is prosecuted, examined and tried in court (Article 1 point 15 of the Criminal Procedure Code). It means crown witnesses only presented in one criminal act with more than one suspect. Moreover, the witnesses can be one of the suspects with the smallest job among other suspects.

c) The witness is given the authority in the form of special treatment, called reduced charges for a criminal act in which he is one of the perpetrators, or he can be forgiven for his mistakes (Lilik Mulyadi, 2012).

The crown witnesses have two levels, including the officer who has a duty or deliberately conducts the command over him to commit a criminal offence and the person who is a perpetrator of a criminal offence itself. When the crown witness is an officer who conducts the criminal act on purpose, the justification refers to Article 51, paragraph (1) of the Criminal Procedure Code. Meanwhile, when the crown witness is from the perpetrator of the crime, then the justification is in the form of exemption from prosecution based on opportunistic principles.

3.2. Legal Protection of Crown Witnesses in Corruption Cases

Every human being necessarily owns the protection since it will cause the people to be more confident to do something and action that are not violating the Indonesian legislation. It also regulated crown witnesses. They also need protection from the law to provide their statements without fear and threats from other parties. In addition, the protection for crown witnesses differs in each case; the researcher takes the example of the crown witnesses in a corruption case.

Legal protection is the safety provided to legal subjects through both preventive²³ repressive, written and unwritten legal instruments. Some experts argue that legal protection is an effort to protect someone's interest by allocating the human rights power to someone to act based on his interest (Rahardjo, 2009).

The valid evidence in a criminal trial is the statement⁵ from witnesses or victims who hear, see, or experience the occurrence of a criminal act to find clarity about the criminal acts committed by the perpetrators. Because the victims⁵ witnesses cannot present their statements in court since they experienced a physical and¹⁰ psychological threat from several parties, the law enforcers are difficult¹⁰ to examine and find clarity about the criminal act itself. From this phenomenon¹⁰ is necessary to provide protection for witnesses or victims who are crucial in the criminal justice process since they are very helpful during the judicial process to guarantee the trial equally.

The enforcement of witness protection is regulated by Law No. 31 of 2014⁵ concerning amendments to Law No.13 of 2006 regarding the protection of witnesses and victims. The protection³¹ law of witness and victim was formed to overcome legal problems, such as the violation of human rights, the difficulties in eradicating corruption, and legal protection that only defend conglomerates, legal apparatus, and other government parties.

In the implementation of criminal justice, the witnesses have not been able to provide their statements in order to reveal material truth in a safe, unpressured and protected from legal backlash. Moreover, witnesses also do not have the right to provide the statement by not being positioned as „a charge”, which means mitigating witness, which can be changed to „a discharge” or an incriminating witness. Witnesses can only provide their testimony in the position of these two interests. In order to obtain an objective or clear statement from the witness, the Criminal Procedure Code divides it into three groups of exceptions, such as:

1. First, the witnesses who cannot provide their statement, including:

- a. Blood relatives, cousins or who are joint defendants up to a third generation,
 - b. Defendant's siblings, mother's or father's siblings, as well as those related by marriage and children of the defendant's siblings up to the third generation,
 - c. Husband or wife of the defendant, even if divorced or jointly accused.
2. Second, the witnesses who can be exempted from the obligation to provide their statement, including:
- a. Those who are obliged to keep the secret due to their occupation, position, or dignity regarding the matters entrusted to them and such matters shall be regulated by law.
 - b. When there is no provision governing the position or occupation, the judge should determine whether the provided statement is valid.
3. The third class of witnesses who may be examined without an oath include:
- a. Children under fifteen years old or have never been married
 - b. A person suffers from memory loss or mental illness, even when their memory occasionally returns.

Crown witnesses are powerful evidence to uncover and expose organized crime, both in the form of scandal and serious crime in criminal acts. Moreover, crown witnesses can be used as an evidentiary aid in disclosing new dimensions of crime, such as corruption cases. The prototype of crime that shifts from conventional methods demands a balance in legal evidence that the disclosed method can no longer rely on the conventional way. Normatively, the occurrence of crown witnesses contradicts the principles of fair trial and violates human rights principles. The regulation²⁵ in Criminal Procedure Code as a national legal instrument and the 1996 International Covenant on Civil and Political Rights (ICCPR) for international human rights instrument, aims to strengthen the³² principles of human rights in the civil and political sector contained in UDHR (Universal Declaration of Human Rights), that they become legally binding provisions for another related sector.

In the implementation of fair trial based on the ICCPR, the form of violations are as follows:

1. The crown witness is essentially a defendant with the absolute right to remain silent, provide denial, or lie answers. It is an inherent consequence due to not requiring the defendant to take an oath in giving his statement. Based on the

provisions of Article 66 of the Criminal Procedure Code, it is explained that the defendant does not have the burden of proof. However, on the contrary, the public prosecutor has the authority to prove the defendant guilty based on the burden of proof.

2. Since the defendant is not subject to the obligation to make an oath, the defendant is free to provide testimony before the court. On the other hand, when the defendant is presented as a crown witness, they cannot provide the statement freely because he is bound by the obligation to take an oath. Therefore, the statement given by the crown witness is equated with a confession obtained through psychological violence (actions that result in fear, loss of confidence, and loss of the ability to act) ("Tindak Kekerasan Dalam Rumah Tangga," 2008).

3. In its development, the Supreme Court has a recent statement regarding using crown witnesses in a criminal case. It is explained that the use of crown witnesses is contrary to the law of criminal procedure, which upholds the human rights stipulated in MARI jurisprudence.

4. The statement from the defendant as a crown witness bound by oath is often used as a basis for proving the defendant's guilt when he lies. It is certainly violating the principle of non-self-incrimination. In addition, when the defendant is silent or does not provide any statement, it cannot be used as evidence to prove his guilt. Moreover, the concept of crown witnesses in formulating the Criminal Procedure Code's draft is the defendant who has the minimum role in committing criminal acts compared to other defendants. Then, the crown witnesses are determined by the public prosecutor.

The prosecutors must fully understand the investigation file regarding the case in conducting their duties. In its implementation, sometimes the public prosecutors feel doubt or uncertainty in determining the role of the defendants, whether the defendant is the main perpetrator of a criminal act or an assistant from other perpetrators. This uncertainty of public prosecutors indicates the frequency of constructing the indictments with alternative forms. Although the draft of the Criminal Procedure Code stipulates that suspects or defendants who plead guilty and substantially assist in uncovering criminal acts and the role of other suspects can have their sentences reduced by the district court judge, the sentence reduction depends on the judge's discretion.

4. Conclusion

Based on the explanation of the discussion above, the conclusion is as follows:

1. The presence of a defendant who has jointly committed a criminal act and then used as a witness is a way to implement law enforcement. In addition, the presence of crown witnesses is not prohibited, even though it is contrary to the law. The Jurisprudence of the Supreme Court of Republic Indonesia Number: 1986 k/Pid/1989 does not prohibit prosecutors or public prosecutors from presenting the crown witnesses because his position as a defendant differs from the case where he provides the statement. So, the use of crown witnesses is allowed at certain times, such as:

- a. In the case of participation offence
- b. The lack of evidence
- c. Examined by the splitting mechanism

2. The Indonesian Supreme Court corrected its mistake by expressing a new statement regarding the crown witnesses, which states that „the use of crown witnesses is contrary to Criminal Procedure Code that upholds the human rights”. Despite the decision of the Indonesian Supreme Court, the crown witnesses still presented in trials to provide their statements. The conclusion of the legal protection of crown witnesses in corruption cases is reducing their sentences and being free from prosecution, but this also depends on the examination and the judge’s policy in handling the case.

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