

ANALYSIS OF THE ROLE OF CROWN WITNESSES IN CRIMINAL TRIALS

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Abstract. *Witnesses are quite important pieces of evidence in a criminal case examination. This is because a description of criminal events in the past can be revealed by a witness. In the event of a shortage of witnesses, in a crime committed by more than 1 (one) person, witnesses can be obtained from other defendants. Witnesses who are defendants in separate case files are referred to as crown witnesses. This article aims to determine the role and contribution of crown witnesses in criminal case examinations. The writing method used is normative legal research with a statutory approach. The results of this research are that the existence of crown witnesses and their role in evidence varies in each case or is casuistic. Crown witnesses are ideally used when there is a shortage of witnesses or the principle of unus testis nullus testis is not fulfilled.*

Keywords: *Crown Witness, Criminal Cases, Evidence.*

Abstrak. Saksi merupakan alat bukti yang cukup penting di dalam sebuah pemeriksaan perkara pidana. Hal ini disebabkan karena gambaran peristiwa pidana di masa lampau dapat diungkap oleh seorang saksi. Dalam hal terjadi kekurangan saksi, dalam tindak pidana yang dilakukan lebih dari 1 (satu) orang, maka saksi dapat diperoleh dari terdakwa lain. Saksi yang merupakan terdakwa dalam berkas perkara terpisah disebut sebagai saksi mahkota. Artikel ini bertujuan untuk mengetahui peran dan kontribusi dari saksi mahkota dalam pemeriksaan perkara pidana. Metode penulisan yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan. Hasil dari penelitian ini

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keberadaan saksi mahkota dan perannya dalam pembuktian berbeda-beda pada setiap kasusnya atau bersifat kasuistis. Saksi mahkota idealnya digunakan pada saat terdapat kekurangan saksi atau tidak terpenuhi asas *unus testis nullus testis*.

Kata kunci: Saksi Mahkota, Perkara Pidana, Pembuktian

BACKGROUND

The criminal evidence system aims to search for and obtain material truth, where there are various principles that apply at the trial stage of criminal cases, namely the principle of equality before the law and the principle of presumption of innocence (Febriani, Haryadi, & Rakhmawaty, 2021). The strength of the evidence will be supported by the judge's feeling of confidence based on the existence of valid evidence. This is stated in Article 183 of the Criminal Procedure Code, apart from that, valid evidence is regulated in Article 184 of the Criminal Procedure Code, such as statements by witnesses, statements by experts, letters, instructions and statements by the defendant.

In criminal trial evidence, the term crown witness is often used as a witness and is also another defendant where they have committed a crime together. Based on the theory of evidence in criminal procedural law, the information given by witnesses at trial is seen as an important and main piece of evidence (Sukadana, Amiruddin, & Parman, 2018). The existence of these witnesses is not contained in the Criminal Procedure Code, in practice crown witnesses are used only in joining cases and in criminal cases which have been split (splitting) when examined at the investigation stage. Even though crown witnesses are often used in criminal trials, in fact several parties oppose the use of crown witnesses. Crown witness actually refers to a defendant who has the status of being a witness in the case of another defendant who is doing the same thing, namely in the case of splitting in his examination (Yanti & Mertha, 2020). This was opposed because many people thought it was not in accordance with basic rights and a sense of justice for the defendant.

In fact, crown witnesses have similarities with other witnesses, but have several things that are different, where crown witnesses are both witnesses and defendants where they commit criminal crimes and they get the crown because they want to be witnesses. However, the witness may and has the right to tell lies and be dishonest and deny during the trial process, the witness has the right to deny all his testimony which could

incriminate him and has the right to deny the charges given, this is because it is supported by the principle of presumption of innocence.

The many differences of opinion and perception regarding the presence of crown witnesses at criminal trials have emerged and are further explained in the numerous jurisprudence decisions of the Supreme Court of the Republic of Indonesia. One of which is the Supreme Court of the Republic of Indonesia Decision No. 1174 K/Pid/1994 and No. 1592 K/Pid/1994. The aim of this research is to determine the position of crown witnesses in the process of proving criminal acts in Indonesia.

RESEARCH METHOD

This article was written using normative legal research methods (Jonaedi Efendi dan Johnny Ibrahim, 2018). Normative legal research in writing this article focuses on legal norms or rules related to crown witnesses. The legal materials used in this research are primary legal materials and secondary legal materials. The technique for collecting legal materials uses library research (Sonata, 2015). Meanwhile, the analysis technique uses deductive analysis.

RESULTS & DISCUSSION

Criminal procedural law is a total of legal regulations which regulate procedures for implementing and maintaining criminal law. Criminal procedural law is divided into two forms, namely formal and material crimes. Material criminal law is a legal rule or norm that regulates all acts that are considered unlawful and can be punished as well as regulates the sanctions for these acts. Meanwhile, formal criminal law is the totality of legal rules or norms that regulate procedures for implementing and maintaining material criminal law (Pangaribuan, Mufti, & Zikry, 2017).

The purpose of establishing the criminal law is to discover and search for the truth about an incident. In criminal procedural law, we find evidence that is valid according to positive law and can be used at the evidentiary stage at trial. The evidence regulated in the Criminal Procedure Code in Article 184 of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) is expert testimony, witness statements, letters, instructions and statements from defendants or suspects.

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The use of the term witness is also regulated in the Criminal Procedure Code, namely in Article 1 point 26 of the Criminal Procedure Code which states that a witness is every person who is able to provide information for the purposes of investigation, prosecution and trial regarding the case being examined which he saw, heard and experienced directly. At trials, evidence is not always found, therefore nowadays it often appears that perpetrators who have become defendants can be invited to work together to reveal criminal incidents, by making the suspect or defendant a witness who is often referred to as a crown witness.

This crown witness is a witness who comes from a suspect or defendant who committed a crime together with other defendants. Where one of them is appointed as a witness at the trial of the defendant or other suspects. The crown referred to in this case is a witness who as a defendant or suspect is in the form of a waiver of prosecution in his case and is given leniency if his case goes to court and is even forgiven for the mistakes he has made (Amrullah, 2014).

This law itself was formed to provide justice, usefulness and legal certainty for the community. The existence of law cannot be separated from the existence of formal and material legal sources. Criminal law adheres to one of the principles, namely the principle of presumption of innocence, this principle means that a defendant is presumed innocent until there is a decision from a judge that has permanent legal force. From this understanding, it can be interpreted that during the investigation and trial stages, a defendant is allowed to give a free statement and deny it. The purpose of this right to deny is regulated in Article 52 of the Criminal Procedure Code which explains that during examinations at the investigation and trial levels, a suspect or defendant has the right to give his statement freely before investigators and judges (Raja, Fauzi, & Sahari, 2023).

Initially, the regulations regarding crown witnesses were regulated in Article 168 letter (c) of the Criminal Procedure Code, which essentially stated that a person who was simultaneously a defendant could not have his statement heard and could withdraw from being a witness. Although the definition of this witness is not clearly regulated, the Supreme Court Decision Number 1986 K/Pid/1989 on March 21 1990 in Article 340 of the Criminal Code explains that the Public Prosecutor based on positive law is permitted to appoint one of the defendants who participated in the crime before the court, However,

with the condition that this witness has a separate case file from the defendant who is giving testimony (YUSMAN, 2019).

So, the use of crown witnesses arises from the development of Article 142 of the Criminal Procedure Code regarding the separation of case files for defendants which states that if the case file is received by the public prosecutor, it contains

For several criminal acts and more than one person involved, which does not fall under the provisions of Article 141, the public prosecutor can prosecute each defendant separately. Regulations regarding a suspect who becomes a witness are also regulated in Law No. 13 of 2006 concerning the protection of witnesses and victims, specifically in Article 10 paragraph (2) which explains that a witness and the defendant in the same case cannot be released from their charges if in fact they are legally proven and are certain that they have committed a mistake. However, the information provided can be used as material for the judge's consideration to reduce the criminal charges

In Article 168 of the Criminal Procedure Code, it regulates anyone who cannot be a witness and whose testimony cannot be heard before the trial. Apart from that, they can refuse or resign as a witness, namely the blood/sibling family of the defendant either in a straight line up or down, relatives of the defendant or those who are jointly accused, and the husband or wife of the defendant, whether still married or divorced, and the children of the defendant or those who are jointly accused. Those who are regulated in Article 168 of the Criminal Procedure Code are people who have the right to resign as witness. However, they can still give their testimony in accordance with Article 169 paragraph (1) of the Criminal Procedure Code if they wish to do so and obtain express approval from the public prosecutor and the defendant. With this, they can still give testimony under oath, this also applies vice versa, if the public prosecutor and the defendant refuse, based on Article 169 paragraph (2) of the Criminal Procedure Code they can still give testimony without being under oath (Tabah, 2021).

There is various jurisprudence that regulates and provides various perceptions regarding crown witnesses, both in terms of accepting and rejecting the existence of crown witnesses. As is known, crown witnesses are not regulated in the Criminal Procedure Code but are often used in criminal cases. However, it is stated in several Supreme Court Decisions such as number 2437 K/Pid.Sus/2011 and the Republic of Indonesia Attorney General's Circular Letter No. B-69/E/02/1997 concerning the law of

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evidence. With the presence of this crown witness, the judge must find out all the reasons given by the witness. If you do not know the reasons for certain then the use of crown witnesses will be in vain and will not be able to provide the judge with a clear view of the events revealed by the crown witnesses.

For example, in a criminal incident that was carried out together, the witness is not sure that the defendant he saw committed the crime. However, judging from the proportions of the face, body posture and hair, it is similar to the defendant who gave his testimony. From this example, the witness provides inaccurate and uncertain information, which means there must be certain circumstances and reasons that make the witness like that. Therefore, a judge is obliged to dig deeper into the circumstances and reasons for the witness. Here it can also be seen that the judge must be very subjective and objective in examining the crown witness.

Witnesses are part of the evidence which has a very important role in the evidentiary stage at the trial of every case, whether criminal or civil. Basically, a witness must fulfill several provisions, namely that the witness must be seen, heard, and/or directly experienced the case being examined in court. If this witness is found to have given false information or does not match the facts, then he will be subject to sanctions for his actions.

Everyone can testify if it does not conflict with Article 168 of the Criminal Procedure Code (KUHAP), including the defendant. As a defendant, the information given is only valid and binding on himself. This is in accordance with Article 189 paragraph (3) of the Criminal Code. As is the case with suspects or defendants who become crown witnesses for criminal acts committed together. Therefore, the testimony or statements from the defendant or suspect must be in line with Article 142 of the Criminal Code where case files must be split so that later the defendants or suspects will be tried separately.

If you look at the Criminal Procedure Code, there are no rules and it is not clearly regulated regarding the whereabouts of these crown witnesses, starting from examinations at the police to court. However, the prohibition on someone testifying does not regulate the prohibition on a defendant of the suspect testifies at trial, this prohibition on testifying is regulated in Article 168 of the Criminal Procedure Code. However, as times progress, the existence of crown witnesses is increasingly being used at the evidentiary stage regarding a legal event that is being examined. Many opinions are expressed regarding the use of crown witnesses often in several jurisprudence,

jurisprudence itself is one of the sources of formal law which is briefly formed and obtained on the judge's decision. As for the Supreme Court decision Number 1174 K/Pid/1994 on 3 May 1995 jo. Number 1592 K/Pid/1994 on 3 May 1995 which stated that the examination carried out on the crown witness based on this decision was the crown witness who was also the perpetrator, appointed by a defendant who at the same indictment gave testimony.

In other jurisprudence such as the Supreme Court Decision Number 1986 K/Pid/1989 on March 2 1990 which essentially states that the Public Prosecutor is permitted based on positive law to nominate friends of the defendant who took part in committing the unlawful act as witnesses at the trial in court. country. However, there is a provision that witnesses who are defendants are not included in the same case file. The circular also states that in the use of crown witnesses, as much as possible, other additional evidence should be sought, because seeing crown witnesses is still a matter of debate, with this being seen from Supreme Court Decision No. 1174 K/Pi/1994, 381 K/Pid/1994, 1592 K/Pid/1994 and 1706 K/Pid/1994 state that the use of crown witnesses is contrary to law.

Judging from the Attorney General's Circular Letter number B-69/E/02/1997 in 1997 concerning the law of evidence in criminal cases, it explains regarding crown witnesses. Although the Criminal Procedure Code does not clearly explain and regulate the use of crown witnesses. However, basically a crown witness is a witness and also a defendant who commits an unlawful act together, whether he is the perpetrator or provides assistance in carrying out or participates in carrying out the criminal act.

Basically, the position of the crown witness is as part of the existence of valid evidence according to law in the evidentiary stage of a criminal case. However, the presence of a crown witness must fulfill several requirements in a criminal case. The requirements are such as the inclusion of the criminal act that occurred, the lack of evidence obtained which will result in obstruction of the path of proof, and the case files being separated between the defendant and the witness who is the defendant or suspect.

This statement from the crown witness can be used at this stage. evidence at trial. However, as far as possible it is supported by other valid additional evidence so that the evidentiary requirements are met. And also the use of crown witnesses is used as a last resort if there is still minimal evidence found. The crown referred to in this crown statement is related to the award received by the defendant who is a witness, namely that

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he can be given leniency in the criminal process in the decision up to the granting of freedom with the conditions given to him, apart from that, the granting of remission and several other rights of the defendant will be adjusted. based on the considerations of the panel of judges at the trial

CONCLUSION

Basically, the Criminal Procedure Code does not clearly regulate crown witnesses, but in its implementation, crown witness has the meaning of being a witness obtained from a defendant or suspect who jointly commits a crime and obtains a crown in the event that they will be forgiven or given relief from their charges. The crown witness applied Article 142 of the Criminal Procedure Code between one defendant and another, whether their case files were differentiated or not included in one case file.

Some of the jurisprudence that regulates crown witnesses is the Indonesian Supreme Court Decision No. 1986 K/Pid/1989 dated 21 March 1990 in Article 340 of the Criminal Code, SE Attorney General of the Republic of Indonesia No. B-69/E/02/1997 concerning the law of evidence and Supreme Court Decision No. 2437 K/Pid.Sus/2011.

Initially, the position of a crown witness in evidence at trial began with the presence of evidence and the provisions of Article 168 of the Criminal Procedure Code. The permission of the defendant as a witness is based on the fear of insufficient evidence being collected, especially in criminal cases which take the form of inclusion and to fulfill public justice. As time progressed, the position of crown witnesses as evidence in trials was prohibited and not permitted, because it took into account the human rights of the opposing defendant as regulated in the Criminal Procedure Code as a positive legal instrument. This prohibition is also supported by the Jurisprudence of Supreme Court Decisions Number 1174 K/Pid/1994 on 3 May 1995 and Number 1952 K/Pid/1995 on 29 April 1995.

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