

The role of the Crown Witness in the Process of Proving Criminal Cases in Indonesia

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ABSTRACT

The research issue focuses on the examination of crown witnesses in the process of establishing criminal cases in Indonesia. The examination of the crown witnesses is necessary because law enforcement officers find it difficult to find evidence, other than the testimony of witnesses of the perpetrators themselves in order to find material truth that can be justified. The result of the research shows that the role of the crown witness in the criminal prosecution process is very significant, that is to find the material truth, so that the fast and simple proof process fulfills the minimum standard of proof, upholds public justice against the perpetrators and determines the demands of each actor in accordance with its role. The need for legal protection against the crown witness and the need for a policy of reform of criminal procedure law through the refinement of the Criminal Procedure Code relating to the content of witness material of the crown firmly and limitatively in the future.

ARTICEL INFO

Keywords:

Evidence; Criminal;
Crown Witness

How to cite:

Ismail, Sofyan, A. M.,
Azisa, N. (2018). The role
of the Crown Witness in the
Process of Proving Criminal
Cases in Indonesia
Musamus Law Review,
1(1), 21-39

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1. INTRODUCTION

Indonesia is self-proclaimed as a legal state,¹ the rule of law is a translation of the term "rechstaat" or "rule of law".² The naming of "Rule of law", itself can be said as a form of juridical formulation of the idea of constitutionalism. The State of the Republic

of Indonesia is a Law State, which obliges every human being to always act in accordance with the law which is in line with Pancasila and the 1945 Constitution³. In the simplest sense "rule of law" is interpreted by Thomas Paine as no one is above the

¹ Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

² Hamdan Zoelva. (2015). Prospek Negara Hukum Indonesia: Gagasan dan Realita. *Hasanuddin Law Review*, 1(2), 178-193. doi: <http://dx.doi.org/10.20956/halrev.v1n2.78>

³ Arhjayati Rahim (2012). Praperadilan Sebagai Control Profesionalisme Kinerja Penyidik. *Jurnal Pelangi Ilmu*, Vol. 5 No.1. <http://ejurnal.ung.ac.id/index.php/JPI/issue/view/110>

law and the law is in power. Therefore, the constitution and the state (law) are two inseparable institutions. The state based on the law places law as the highest (supreme) so that there is a term of rule of law. The supremacy of law must not ignore the three legal bases, namely justice, expediency and certainty.

Philipus M. Hadjon stated that the concept of rechstaat was born from the struggle against absolutism, so that it was revolutionary in nature, whereas the concept of the rule of law evolved evolutionarily. This can be seen from the contents or criteria of rechstaat and the criteria of the rule of law.⁴ The main similarity between the concept of rechstaat and the concept of the rule of law is that there are guarantees for human rights.⁵ Whereas the main difference between rechstaat and the rule of law is that there is an element of administrative justice.⁶ Referring to the concept, characteristics and principles of the rule of law, the implementation of the provisions of the 1945 Constitution as a state constitution in the field of enforcement of criminal law and protection of human rights in Indonesia has been stipulated technical legislation concerning criminal procedural law.

One aspect that needs to be refined is the existence of witnesses in the process of proving criminal cases. The witness is one of the determinant factors in the process of resolving criminal cases in court. In the provisions of the Criminal Procedure Code the regulation of witnesses still revolves around a conventional view where the witness who is often presented at the trial is the victim of his own crime because he who experienced, saw and heard himself about the crime that occurred.

Current community development requires the examination of "crown witnesses". However, the existence of a "crown witness" in Indonesia's positive criminal procedural law has not been regulated explicitly and is limited. The role of the crown witness is actually very significant to reveal who, where and how the crime occurred. This is because the crown witness is an "insider" who knows very well about planning, preparation, and the implementation process so that a criminal act is committed by the suspect or the suspects. However there are serious concerns that it turns out that in addition to not being regulated in the provisions of the Criminal Procedure Code (KUHAP), the examination of crown witnesses has also not provided significant legal protection to witnesses who are also suspects whose rights are protected by law.

The author is concerned about the development of criminal justice practices in Indonesia today, where examination of the crown witnesses is considered something normal and natural. The authors' concerns are based on the application of controversial crown witnesses, including the following: (1) Examination of crown witnesses is not based on the provisions of the Criminal Procedure Code explicitly and limitedly, except as limited as stipulated in Article 142 of the Criminal Procedure Code concerning case splits; (2) In the evidentiary law, which must prove is the one who filed a claim against the suspect, namely the public prosecutor, not a suspect who must prove his fault, and if the suspect is unable to prove his fault then he is considered guilty. So it becomes irrelevant if the suspect or defendant is burdened with proof,

⁴ Philipus M. Hadjon. (2007). *Perlindungan Hukum Bagi Rakyat di Indonesia*, Edisi Khusus, Surabaya: Peradaban, pp. 67.

⁵ S. F. Marbun. (1997). *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, Yogyakarta: Liberty, pp. 10.

⁶ *Ibid*, pp. 11.

because the burden of proof should be on the public prosecutor. (3) Information The suspect or defendant only applies to himself, cannot be used for other parties, so he has the right not to answer questions during the examination when he is presented as a witness. In this context it is not justified to force the suspect to provide information which ultimately incriminates or criminalizes himself (non self incrimination); (4) Fellow defendants or suspects may resign as witnesses, unless the person concerned requests to be a witness and is permitted by the public prosecutor. The substance of the crown witness is the witness of a fellow suspect, where one suspect becomes a witness of the suspect in another case, and vice versa, and so on so that the fellow suspects witness each other. (5) In judicial practice, if a suspect is put forward as a witness, he is under serious pressure because he is required to provide correct information. If he is a witness, the suspect must be sworn in first, while if the suspect refuses to take an oath he can be threatened with a criminal statement.

Apart from the controversy above, the examination of the crown witnesses is also useful to protect the public from obtaining justice against the perpetrators of criminal acts whose evidence is difficult and the public prosecutor is not easy to present witnesses to obtain the minimum evidence as determined by law. Here the principles of balance between the interests of public justice and the interest in protecting the rights of suspects must apply. This means that only in certain circumstances that are very urgent and urgent that the examination of "crown witnesses" is allowed to maintain balance in people's lives to create harmonious social stability.

Examination of the crown witnesses in the Criminal Code Provisions is only a development of the provisions of Article 142 of the Criminal Procedure Code, which regulates the authority of the public prosecutor to issue cases if several criminal acts are committed by several suspects.⁷ Then regarding the crown witness who was also known as the "witness of the perpetrator", his settings were found only in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims juncto Law Number 31 Year 2014 concerning Amendment to Law Number 13 of 2006 concerning Witness Protection and Victim. Then regarding whistle blower and witness collaborator, it is also only regulated in Circular of the Republic of Indonesia Supreme Court (SEMA) Number 4 of 2011 concerning the Treatment of Whistle Blower and Collaborating Acting Witnesses (Justice Collaborator) in certain criminal cases.

The role of crown witnesses is very much needed in judicial practice because in certain criminal cases "inclusion" the prosecutor is very difficult to find witnesses who fulfill the formal requirements of statutory testimony. To protect the public from the behavior of crimes, the defendant as a perpetrator should be punished for his criminal actions. But because of a lack of evidence that the public prosecutor was unable to prove his charges, as a result the defendant was not proven to have committed a criminal act so the judge had to release him. Even though materially the defendant committed the crime. Surely here public justice is sacrificed. Thus, the essence of the role of the crown witness in a criminal case is actually to prove the charges of the Public Prosecutor before a court hearing regarding the occurrence of a criminal act by a

⁷ Article 142 of the Criminal Procedure Code affirms that in the event that the public prosecutor receives a case document containing several criminal acts committed by several suspects not included in the provisions of Article 141, the public prosecutor may prosecute each defendant separately. In criminal justice practices the method of separating case files by public prosecutors is called splitting cases.

criminal offender. The witness was then given the title as "crown witness", because the public prosecutor did not have the minimum evidence to file someone as a witness, except for the suspect or defendant.

The existence of a crown witness must be based on the provisions of the applicable criminal procedural law. It should not only be based on the practice of judicial practice, or only based on the Supreme Court Circular of the Republic of Indonesia. So it should be necessary to find the best solution so that the enforcement of criminal procedural law on the one hand runs according to legislation that is adequate based on the principle of due process of law and protection of human rights. Whereas on the other hand, perpetrators of crimes can be punished fairly so that the community can enjoy the right to life peacefully and peacefully. To strengthen the strategic position of the crown witness role, a criminal procedural law legislation is needed as a legal umbrella to provide formal juridical justification through formal criminal law policies in the legal system in Indonesia.⁸

For the author, the existence of a crown witness (crown witness, kroon getuiger) in judicial practice is interesting to study, because of the material truth of his testimony, as an "insider" who jointly committed a criminal act. Besides that to protect the public from the behavior of the perpetrators of crime, in an effort to uphold public justice. More importantly, a solution to criminal procedural law is needed to accommodate the existence of crown witnesses in the Criminal Procedure Code. Therefore, it is very strategic and relevant to encourage discussion of the draft KUHAP through the National Priority Legislation Program (PROLEGNAS) in the future. The aim is to guarantee adequate protection to suspects or defendants as witnesses (crown witnesses), so that the rights of such suspects are protected by law through relevant legislation.

2. METHOD

This type of research is normative legal research, namely the type of legal research that places the law as a norm system, or commonly called "doctrinal research".⁹ Types of data in legal research in general can be classified into two types, namely primary data and secondary data. The types of data used in this study are data obtained from library material or literature that has a relationship with the object of research.

The research approach used in this research is the statute approach).¹⁰ The legal issue analyzed in this thesis is the role of the "crown witness" in the process of proving criminal cases. Regarding "crown witnesses" even though they are not yet explicitly and limitedly regulated in the provisions of the Criminal Procedure Code, in criminal justice practices are needed to fill the space where public prosecutors need them. When the prosecutor found no witnesses and limited evidence was found so that the witness must be examined by examining the method of splitting the case (splitsing). Finally,

⁸ Setiyono, S. (2007). Eksistensi Saksi Mahkota sebagai Alat Bukti dalam Perkara Pidana. *Jurnal Lex Jurnalica*, Vol. 5 No. 1: 68-71

⁹ Soerjono Soekanto dan Sri Mamudji. (2001). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: PT. Raja Grafindo Persada, pp. 13-14.

¹⁰ Peter Mahmud Marzuki. (2010) *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group. pp. 93.

because this research is a type of normative research, the data analysis technique used is qualitative analysis. The study was specifically carried out on "crown witnesses" regulated by Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP).

3. ANALYSIS AND DISCUSSION

3.1. The Role of Crown Witnesses in Proving Criminal Cases

Submission of crown witnesses aimed at proving criminal cases at the practical level is based on certain conditions, namely as follows:

- a. The existence of a crime in the form of "participation",
- b. Against "inclusion" the crime is examined by the mechanism of separation of case files (splitsing)
- c. If in the "inclusion" of the crime there is still a lack of evidence, especially witness testimony..

This is intended so that the defendant is not free from the responsibility as a criminal offender. Besides that, in order to facilitate the verification process so that a case is not protracted in its completion in court proceedings. According to the author's research, the role of the crown witness in the process of proving criminal cases is basically to:

1. 1. Finding material truth;
2. 2. So that the verification process is fast and simple;
3. 3. Meet the standard of minimum verification;
4. 4. Upholding public justice against perpetrators of criminal acts; and
5. 5. Determine the demands of each actor in accordance with his role.

The five things just mentioned above, will be explained one by one in the description as follows:

3.1.1. Finding material truth

Aris Singgih Harsono stated that the crown witness in proving criminal cases was very important, because when a crime occurred, where the investigator found it difficult to find another witness, because no one knew other than the perpetrator, the examination of the perpetrator as a crown witness could be the key to uncovering the occurrence criminal act. Actors as crown witnesses can make a fact about the criminal incident. Furthermore, the most important role of submitting a crown witness in the process of proving criminal cases at the trial is to find material truth, or true true truth. The truth that is to be found is whether the crime actually happened and the accused was guilty of doing so. Thus, the defendant was prosecuted and tried to account for his mistakes.¹¹

Material truth is the truth as complete as possible or at least approaching the truth of a criminal case by applying the provisions of criminal procedural law honestly and precisely in order to find out who the perpetrator can be accused of violating the law, and subsequently requesting an examination and decision from the court find out whether it has been proven that a crime has been committed and whether the accused

¹¹ The author's interview with the Chairperson of the Manokwari District Court, Mr. Aris Singgih Harsono, S.H., M.H. on Monday 18 December 2017 09.59-10.45. WIT is located in the Main Room of the Chairperson of the Manokwari District Court.

person can be blamed.¹² Thus, the judge in examining a criminal case in a court session always tries to obtain evidence about:

1. Is it true that an event happened?
2. Is it true that the incident is a crime?
3. What are the causes of the event?
4. Who is the person who has been guilty of the incident?
5. Can the criminal be held responsible for the guilty?

So the purpose of proof is to find, find, and determine the truths in the case, and not to find someone's fault.¹³ The truth that is sought is the real truth, namely material truth.

3.1.2. The process of proof is fast and simple

The second role of the crown witness is so that the verification process takes place quickly and simply, so that the settlement of the case does not drag on the trial in court. The process of proof will take a long time if the examination of witnesses falters, is not smooth, or even complicated. Though proof is the heart of the criminal justice process to determine whether or not a person is guilty based on the evidence and facts of the trial. Therefore the delay in the process of proof will affect the length of time the case is resolved in court so that it is avoided by the panel of judges.

According to Aris Singgih Harsono's explanation, the attorney has an interest in presenting a crown witness to prove his charges while the panel of judges views the need for an examination of the crown witnesses to find the truth about the occurrence of a criminal act and the perpetrator who can account for the act. The meeting was to ensure the existence of a quick and simple verification process.

The presence of a crown witness in giving testimony as an "insider" who knows the ins and outs of a crime will make it easier for the panel of judges to assess the evidence. The witness's testimony greatly helped speed up the process of proof because as a perpetrator, he knew, experienced and saw himself when the crime occurred, even before and after the crime. In addition, he will be able to describe the role of each of the significant actors to determine the extent of their respective roles in order to realize criminal acts.

If it is related to the testimony of other witnesses, such as victim witnesses, then the testimony of the crown witnesses can be confronted with the testimony of the victim's witness so that the panel of judges will obtain more reliable information to help strengthen the judge's conviction. This is because the parties involved in the occurrence of a crime have conveyed what they saw, heard and experienced themselves about the crime that occurred. Thus the presence of a crown witness will greatly assist the panel of judges in accelerating the process of proving criminal cases.

¹² Andi Hamzah. (2013). *Hukum Acara Pidana Indonesia*. Jakarta: PT. Sinar Grafika. pp. 7-8.

¹³ Andi Muhammad Sofyan dan Abd. Asis. (2017). *Hukum Acara Pidana Suatu Pengantar*, Cet. Ke-3. Jakarta: Kencana Prenada Media Group. pp. 229.

3.1.3. Meet the standard of minimum verification

Article 183 of the Criminal Procedure Code stipulates that a judge may not impose a sentence on a person except if with at least two legitimate evidences he obtains the conviction that a criminal act has actually occurred and that the accused is guilty of doing so. In the official explanation of Article 183 of the Criminal Procedure Code it is said that this provision is to guarantee the upholding of truth, justice and legal certainty for a person.

Looking at the Article 183, the sentence "with at least two valid evidences" is observed. The purpose of the above phrase is that to impose a sentence on a person a judge may only be made if the defendant's fault has been proven "with at least two valid evidences". So the minimum proof limit that is deemed sufficient to prove the defendant's fault so that he can be convicted of a criminal offense must be at least two valid evidences. One proof of the law considers that it is not enough to prove the defendant's fault. So the minimum is considered sufficient by law, at least "two valid evidences".

The provisions of Article 183 of the Criminal Procedure Code if it is associated with the limitative provisions regarding the types of evidence in Article 184 paragraph (1) of the Criminal Procedure Code so that "with at least two pieces of evidence" is one of the evidence evidence witness statements, expert statements, letters, instructions and information from the defendant. So at least, it means that there must be at least two evidences as referred to in Article 184 paragraph (1) of the Criminal Procedure Code.

Regarding the crown witness, he was included in the genus of witness testimony, but the witness statement was given in his position as a suspect or defendant. According to Agus Joko Santoso, the testimony of the crown witness was basically an examination of the suspect witnesses caused by the absence of other witnesses other than the suspect, while other evidence was only in the form of instructions, so the public prosecutor had to do a splitsing of the accused, the defendant one becomes a witness for the other defendant, and so on so that it can be met with a minimum proof limit at the trial.¹⁴

Crown witnesses are basically suspects or defendants where to prove the occurrence of a crime there is only evidence that there is no evidence, no one sees as a witness, except the perpetrator (suspect or defendant). So that the case can be submitted to the court, there is no other way except by the mechanism of solving the case files by the public prosecutor (splitsing). For example, in cases conducted by 2 (two) people, namely A and B, who are both suspects. In one case, A becomes a witness to case B, while on the contrary B becomes a witness to case A. Even though the substance of this case is just one case but it is dysfunctional in order to fulfill the evidentiary requirements at court proceedings. But if other evidence exists and meets the evidentiary standards, there is no need to examine the crown witnesses through case splits, but the case is filed in a single file.

¹⁴ Interview with Manokwari District Attorney General's Head, Mr. Agus Joko Santoso, S.H. on Friday 24 November 2017 at 13.45 - 14.30 WIT at the Main Room of the Manokwari District Attorney General's Office.

The task of the Public Prosecutor is to prove to the judge before the court proceedings, that the crime has actually taken place and the perpetrator is as stated in the indictment. However, what is proven by the public prosecutor will be tested by the judge about the extent of the truth and what evidence supports the statement or statement. Everything will eventually lead to the judge whether the evidence presented meets the minimum verification requirements and whether with the minimum verification requirements the judge believes that there has been a criminal offense and the accused is guilty of doing so.

Examination of the crown witnesses submitted by the public prosecutor through court cases in front of the court session is solely to convince the judge of the occurrence of a criminal act and the defendant is guilty of doing so. The witness evidence (crown), to complete other evidence so that the minimum proof requirement has been fulfilled, namely with at least two valid evidence. Based on the evidence, the judge obtained the conviction to declare the perpetrator of a guilty crime accompanied by legal sanctions in accordance with his mistake.

3.1.4. Uphold public justice against criminal offenders

The following crown witness role is to uphold public justice as a result of a criminal act committed by a suspect or defendant.¹⁵ Legal protection for victims of crime both individually, in groups and society in general (public) should be guaranteed by the state through a fair system of law enforcement. In the KUHAP system which is based on the concept of protection of human rights, the perpetrators of crimes are in such a way protected by their rights both as suspects, defendants and convicts. But it is inversely proportional to the protection of victims of crime. It can be said in the Criminal Procedure Code that there are almost no rights of victims of crimes protected by law in a certain manner. What is often echoed is about compensation and rehabilitation. It should be noted that the value of compensation in the Criminal Procedure Code is not worth the loss and suffering of the real victim, both material and immaterial losses. Likewise rehabilitation is only a mere legal formality that does not touch the feelings of victims who are truly hurt and suffer from the perpetrators of crimes that cause them to become victims of crime.

This condition places the crown witnesses in the hope that it will be able to explain clearly who the perpetrators of the crime are responsible for the occurrence of losses to the victims, both material and immaterial losses. So that criminal offenders can be punished fairly, and on the other hand can protect the feeling of justice of the victims because they suffer from the treatment of suspects or defendants, but if prosecution and criminal justice cannot be carried out simply because of the lack of evidence that perpetrators of crime are unsettled , it can be ascertained that the community will feel weak law enforcement and easy to become victims of crime. This condition will eventually lead to a level of public trust in law enforcement that will be worse down to the nadir, which is the lowest point where humans have lost their sense. This is where the importance of examining the crown witnesses to uphold public justice in order to increase public confidence in the right and fair law enforcement system. However, it is also impossible to force someone to become a suspect without being accompanied by evidence and facts that support that direction.

¹⁵ *Ibid.*

3.1.5. Determine criminal charges against perpetrators according to their role

The process of examining the crown witnesses of the perpetrators has different roles so that they can explain their respective roles. The aim is to find the role of each actor so that the public prosecutor can create a framework and pattern for the preparation of indictments that lead to criminal acts about who is the perpetrator and what and how the role of each actor. Of course accompanied by information about when and where the crime was committed. Likewise, so that public prosecutors can formulate criminal charges of each actor in accordance with their respective roles in realizing the occurrence of criminal acts. So that someone can only be prosecuted based on the qualifications of the deeds that are in accordance with their mistakes in order to obtain the right sense of justice.

3.2. Protection of the Crown Witness Law

The existence of a crown witness in the process of proving criminal cases in Indonesia is very vulnerable, especially the low legal protection of the crown witnesses. There are several factors that cause weak legal protection against crown witnesses, including the absence of due process of law in examining the crown witnesses. This is due to the absence of laws and regulations on criminal procedure laws that regulate crown witnesses and their specific protection which can be used as a reference, even if there are still scattered here and there in various special criminal laws and other general and non-specific laws and regulations. protection of crown witnesses. Because of the circumstances, the practice of crown witnesses in the courts is still ongoing where it is only based on customs in judicial practice.

Another indication is that law enforcement officials do not understand well about the prohibition to criminalize suspects (non self incrimination) when they are used as witnesses that can incriminate themselves. Law enforcement officials are still confined to the question of custom in judicial practice regarding the ability to conduct an examination of the crown witnesses. Both of these are further explained in detail as described below.

3.2.1. Due process of law in examining the crown witness

Due process of law is a legal requirement that states that a country must respect all legal rights a person has. When the government is known to try someone without following applicable law, this can be considered as violating a fair process, which offers legal rules.¹⁶

The essence of due process of law that every enforcement and application of criminal law must be in accordance with constitutional requirements and must obey the law. Therefore in due process of law does not allow the violation of a part of the legal provisions under the pretext of enforcing the provisions of another legal part.

In order for the concept and essence of due process of law to be enforced and enforced by law enforcement officials, it must be guided and recognized, respect for, and protect (to protect) and guarantee the doctrine of incorporation (incorporation

¹⁶ Farezha, Wanda Rara. (2017). Analisis Putusan Hakim Praperadilan Dalam Perkara Tindak Pidana Korupsi (Studi Putusan Praperadilan Nomor 14/Pid. Pra/2016/PN. Tjk). Univ. Lampung, *Jurnal Hukum Poenale*. Vol. 5, No. 3.

doctrin) which contains various rights, including "the right of self incrimination". No one can be forced to become a witness who is incriminating himself in a criminal act.¹⁷

The empirical context of judicial practice in Indonesia is related to tracing literature in this study, the authors find that the examination of crown witnesses in the process of proving criminal cases clearly clashes with the provisions in the articles of the KUHAP itself which can be mentioned as follows:

1. Article 142 which states that:

"In the event that the public prosecutor receives a case document containing several criminal acts committed by several suspects who are not included in the provisions of article 141, the public prosecutor may prosecute each defendant separately."

2. Article 168 letters b and c, which confirms that:

"Unless otherwise specified in this law, the statement cannot be heard and may resign as witness:

a.

b. the brother of the defendant or together with the defendant, the brother of the mother or brother, also those who had a relationship due to marriage and the children of the defendant to the third degree.

c. the accused husband or wife or divorced or who are together as defendants."

3. Article 189 paragraph (3) which states that the defendant's information can only be used against himself.

The provisions of the Criminal Procedure Code are in conflict with generally accepted provisions and are very contrary to the principles in the KUHAP itself, namely the principle of protecting the rights of suspects or defendants. For example, the provisions of Article 142 of the KUHAP which in the practice of justice have been known as court cases by public prosecutors. The splitting method, however, will make the suspect a witness, who is then called the crown witness. The examination model is carried out in a cross-section where after the case files are displaced or separated, the suspect will be a witness to other fellow suspects in different case files. This means that the suspect's information has been used against another person, so it clearly clashes with the provisions of Article 186 letters b and c, which confirms that the testimony of witnesses from fellow defendants cannot be heard as witnesses and can resign as a witness.

Likewise with the provisions of Article 189 paragraph (3), which affirms that the statement of the suspect can only be used against himself, not against other people even though they are mutually disgusted.

Due process of law may not occur law enforcement which actually collides with other legal provisions even though the purpose is to enforce the law. This means that there must be consistency in law enforcement according to the basic principles of protecting the rights of suspects or defendants. If law enforcement is carried out inconsistently it will cause harm to the suspect or defendant, which leads to law enforcement efforts that eliminate or ignore the legal rights of suspects that should be protected by law. The previous description made it clear that legal protection of the crown witnesses in the process of proving criminal cases in Indonesia was not sufficient as expected by the principle of due process of law to consistently protect the legal rights of suspects or defendants as citizens.

¹⁷ Ibid.

3.2.2. The principle of non self incrimination

The principle of non-self-incrimination stipulates that a suspect or defendant in a criminal case examination by law enforcement officials has legal rights guaranteed by the state not to criminalize themselves. In examining the crown witness where the suspect or defendant is made as a witness by the Public Prosecutor with a splitting method or the defendant is examined as a witness to another defendant by the judge in a court hearing is a form of violation of the suspect or defendant's human rights. As explained in Chapter II that the principle of non self incrimination is one of the basic principles of protecting the rights of suspects or defendants in the process of proving criminal cases. This principle is one of the fair trial indicators in upholding the principles of a free trial based on a due process of law that is fair, good, transparent and impartial.

Literature search for several library materials as part of this study, the authors find the fact that the principle of non-self incrimination has not been regulated limitatively in the provisions of the Criminal Procedure Code.¹⁸ however, this does not mean that Indonesia does not recognize the principle of non-self-discrimination in the criminal justice process. Indonesia is one of the countries that has ratified the International Covenant On Civil and Political Rights (ICCPR) agreement through Law Number 12 of 2005 concerning Ratification of the ICCPR. As a country that has ratified the ICCPR, Indonesia is obliged to comply with the rules contained in the international convention. One of them is regarding the principle of non self incrimination. The ICCPR calls the principle of non self incrimination a fair trial indicator where article 14 paragraph (3) letter (g) states that:

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality, not to be compelled to testify against himself or to confess guilty".

There are various mechanisms to ensure that witnesses who have given their information are given the right not to be named as suspects in the same case, namely:

- (1) Mechanism per se; (2) Mechanism for determining judges; (3) Bilateral agreement mechanism.

The mechanism per se gives witnesses the right to be silent or not to talk about things that will burden witnesses themselves. If he is asked to speak, he cannot by law be made a suspect in the same case, or his statement as a witness by law does not have juridical value when he changes his status to a suspect. Furthermore, if a judge's determination mechanism is applied, then the right to immunity not to provide information which is detrimental to him as a new witness exists if it is determined or granted by the judge. Or if the statement has been given, the witness has the right not to change his status to become a suspect, or his statement is not used as evidence when examined as a suspect if it is determined or granted by the judge.

As for the bilateral agreement mechanism, an agreement was made between the investigator and the witness that if he wanted to explain everything about a case he

¹⁸ Afandi, F. (2013). Implementasi Pengabdian Masyarakat Berbasis Access to Justice Pada Lembaga Bantuan Hukum Kampus Negeri Pasca Pemberlakuan Undang-Undang Bantuan Hukum. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 2(1), 31-45.

knew, then the investigator would not be made a suspect. If with this statement as a witness, it can ensnare the other party with more important position, then the witness is called a justice collaborator or whistle blower.

The non-self incrimination principle which was included as one of the fair trial indicators gave birth to the consequence that the submission of crown witnesses was a matter that was very contrary to good and impartial judicial principles and also included violations of the principles of human rights.

The criminal justice process in the provisions of the Criminal Procedure Code prioritizes the protection of human rights, which is a system so that people can live up to their rights and obligations. In the Criminal Procedure Code it has implicitly contained the principle of non self incrimination. This is partially reflected through Article 66 of the Criminal Procedure Code that the suspect or defendant is not burdened with the obligation of proof, meaning that the burden of proof is the duty of the public prosecutor. Likewise, Article 175 of the Criminal Procedure Code implies the existence of infidelity for the defendant. The provision confirms the following:

"If the defendant does not want to answer or refuse to answer the question posed to him, the presiding judge of the trial recommends answering and after that the examination be continued".

Article 189 paragraph (3) of the Criminal Procedure Code also states that the defendant's information can only be used for himself. Also the absence of the defendant's acknowledgment as a valid evidence as stipulated in Article 184 paragraph (1) of the Criminal Procedure Code, and Article 168 of the Criminal Procedure Code concerning relative exceptions to be a witness.

The defendant basically has the right to remain silent and the right not to answer or reject questions raised to him. This right has to do with the freedom of the suspect or defendant to give information to the investigator or judge referring to Article 52 of the Criminal Procedure Code. Based on the explanation of Article 52 of the Criminal Procedure Code, so that the examination can achieve results that do not deviate from the truth, the suspect or defendant must be kept away from fear. the crown in a criminal case where a friend who is a participant in a criminal offense sits as a defendant is required to testify under an oath that binds him. He was questioned as a witness so he was forced to give an attack which could incriminate himself if he was examined as a defendant later. If the information given in his position as a defendant contradicts the statement given as a witness in another defendant's criminal case, he can be threatened with a criminal offense. The consequence of the violation of the oath is that the defendant will be charged or threatened with a new indictment in the form of a criminal act of false witness as stipulated in the provisions of Article 242 of the Criminal Code.

The defendant will get psychological pressure as a result of the oath that was pronounced when giving testimony as a crown witness. He no longer has the right to deny as when he was in a position as a defendant. The information he gave in his capacity as a witness was very likely to be used by the public prosecutor to ensnare him in a trial where he was a defendant.) has been violated, namely the prohibition of the following principles:¹⁹

¹⁹ *Ibid*, pp. 64-65.

1. The right of a suspect to keep silent (remain silence).
2. The right of a suspect to get a defense by an advocate.
3. The obligation of the state to provide free advocates for suspects who cannot afford an advocate.
4. The imposition of a non-legitimate sentence.
5. Obligations of investigators to prove seriously.
6. Implementation of procedural due process of law.
7. The obligation of the state to protect its citizens from arbitrary treatment.
8. Integrity is a system of criminal justice system as a whole.

The answer from the suspect given to the investigator to the judge in a criminal process that can be used to harm the suspect or suspect is an act of self-incrimination, unless the answer is voluntary after the suspect or potential suspect is fully aware of the consequences of giving informed information. This is what is called the theory of the fruit of the poisonous tree. Information from a criminal suspect is obtained by improper means, the results (such information) will also be inappropriate for use as legal material.²⁰

The description above clearly illustrates that witnesses are not allowed to criminalize themselves as a result of the process of investigation, prosecution or even the judiciary, let alone those who are clearly suspected or accused as witnesses to the crown. Examination of crown witnesses in the context described above clearly violates the principle of non self incrimination in law enforcement based on the principle of due process of law.

3.3. Expected Criminal Procedure Policy

Crime prevention policies or efforts are essentially an integral part of community protection efforts and efforts to achieve social welfare. Therefore, it can be said that the ultimate goal or main goal of criminal politics is "the protection of the community to achieve social welfare". Thus it can be said that criminal politics is essentially an integral part of social politics (ie policies or efforts to achieve social welfare).²¹

The operationalization or functionalization of the national criminal law system requires a system of material criminal law (the Concept of the New Criminal Code), a formal criminal law system (new KUHAP) and a criminal legal implementation system. With the planned amendment to the current criminal law in the Criminal Code (i.e., with the preparation of the new Criminal Code Concept), it is necessary to study how far the new principles and norms in the concept pose problems seen from the point of view of criminal procedural law. How far the concept of the new Criminal Code requires the support of new rules in the field of criminal procedure law, or conversely how far the current criminal procedure law (specifically contained in the Criminal Procedure Code) requires a review and readjustment of its principles and norms contained in the new KUHP concept.²²

²⁰ *Ibid*, pp. 65.

²¹ Barda Nawawi Arief. (2016). *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*. Jakarta: Kencana Prenada Media Group. pp. 4.

²² *Ibid*, pp. 357.

Sudarto argues that "ius puniendi" must be based on "ius poenale", formal criminal law must support material criminal law. The current Criminal Procedure Code derived from the HIR is oriented to the Criminal Code (WvS) inherited from the Dutch East Indies, so the new KUHAP should also be oriented towards the new KUHP Concept. Therefore it is necessary to review the principles and norms of the new criminal procedure law (KUHAP) which are in line with the new Criminal Code.

Furthermore Barda Nawawi Arief said that criminal procedural law problems that were expected to arise in connection with the basic ideas / principles / norms of the new Criminal Code Bill, could be identified as having four problems, namely:²³

1. Problems with criminal procedural law relating to the problem of "criminal acts" in the new Criminal Code Bill.
2. Problems with criminal procedural law relating to the problem of expanding the subject of criminal acts.
3. Problems of criminal procedural law relating to the problem of "criminal and criminal punishment".
4. Problems of criminal procedural law relating to the problem of "the abolition of prosecution authority"

In connection with the content of this thesis material, the problem of criminal procedure law to be analyzed is the problem of "criminal and criminal punishment", especially relating to the role of crown witnesses in the process of proving criminal cases. The description of the substance of the material will be divided into 2 (two) sub-sections, namely (1) regulation of the crown witnesses in the renewal of the Criminal Procedure Code and (2) the regulation of the rights and obligations of the crown witnesses specifically and limitatively.

3.3.1. Crown witness regulation in the renewal of the Criminal Procedure Code

Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) as a legal product of the nation which in its day was considered to be something grand, monumental and extraordinary. The legal product was born by experts and legal experts who have a very high reputation, integrity and spirit of nationalism to replace the entry into force of the Het Herzaine Indlandse Regulations (HIR) regime which is a product of Dutch colonial law. In the course of approximately thirty-six years of its journey, the Criminal Procedure Code turned out to be far behind the development of Indonesian society which has changed following the trend of global development. These developments require the change of the KUHAP to be mutatis mutandis in accordance with developments in the era of digital information technology and telecommunications which tend to be open and without borders (globalization).

Siswanto Sunarso stated that no country can close its country's meetings on these changes. In line with this, the development of social relations in the international community is also very rapid, marked by the birth of various international conventions

²³ Barda Nawawi Arief. *Op.Cit.*, pp. 358-365.

relating to various fields of life that need to be followed by Indonesia as part of the international community.²⁴

Many international conventions relating to the existence of the Criminal Procedure Code have been ratified by Indonesia. The international convention on International Criminal Court, the United Nations Actions Against Corruption, the International Convention Against Torture and the International Covenant on Civil and Political Rights (ICCPR), are conventions that are directly related to the criminal procedure law and those conventions were born after the year Criminal Procedure Code 1991. As a country that has ratified these conventions there is an obligation to follow the provisions stipulated in the convention. For example, it can be stated in the covenant on civil and political rights (ICCPR) that there are provisions relating to criminal procedural law, for example about the rights of suspects and tightened detention provisions.²⁵

Relevant to the above statement, related to the ratification of the International Agreement on Civil and Political Rights (ICCPR) by the Republic of Indonesia is the need to renew the Criminal Procedure Code regarding the position and role of the crown witness in the process of proving criminal cases.

The question is why the KUHAP needs to be improved regarding the existence of a crown witness. The answer is clear, that the examination of the crown witnesses experienced formal juridical obstacles because they had not been specifically regulated and limited in the provisions of the Criminal Procedure Code. Meanwhile what happened was only a pro-contra debate that was never finished. For those who approve the examination of the crown witnesses assume that the examination of the crown witnesses can be justified against the "inclusion" of a criminal act. Whereas for the counter parties, it is assumed that the crown witness examination is not justified, because it violates the suspect's human rights which should be protected by law. The right solution to fill the legal vacuum is to encourage specific and limited regulation or regulation in the Act through the upcoming Draft Criminal Procedure Code.

Crown witness regulations are important and urgent in the framework of future KUHAP reforms. Not only to mediate views that are pro and contra but to better guarantee legal certainty as the purpose of the law itself. Besides that, to guarantee the fulfillment of formal legality, the existence of a crown witness in the process of proving criminal cases in Indonesia.

According to Aris Singgih Harsono, in the upcoming renewal of the Criminal Procedure Code, the provisions regarding crown witnesses should be regulated in a separate section, for example in one article, as a legal basis for legal practitioners such as judges, to enforce the law in the process of proving criminal cases. The same statement was also conveyed by Agus Joko Santoso, that if in the future there is a renewal of the Criminal Procedure Code, crown witnesses need to be regulated

²⁴ Siswanto Sunarso. (2015). *Filsafat Hukum Pidana, Konsep, Dimensi dan Aplikasi*. Jakarta: PT. Raja Grafindo Persada. pp. 108.

²⁵ *Ibid.*

separately so that there is a formal legality basis for law enforcement officials, especially the prosecutor's office, to prosecute criminal cases against crown witnesses.²⁶

The regulations to be made are in the form of improving Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). It should be noted that to date the government has submitted a Draft Criminal Procedure Law to the House of Representatives of the Republic of Indonesia and has entered the National Legislation Priority (PROLEGNAS), but the discussion is still incomplete.

The Draft Law (RUU) of the 2010 KUHAP in Chapter XII of the Examination at the Seventh Section of the Court Session in Article 200 has been regulated concerning the crown witness, where the provisions read as follows:²⁷

- (1) One of the suspects or defendants whose role is the lightest can be used as a witness in the same case and can be released from criminal prosecution, if the witness helps reveal the involvement of other suspects who deserve to be convicted in the crime.
- (2) If there is no suspect or defendant whose role is minor in the crime as referred to in paragraph (1) then the suspect or defendant who pleads guilty under Article 199 and helps substantively disclose the criminal act and the role of the other suspect can be reduced by the judge's court country.
- (3) The public prosecutor determines the suspect or defendant as a crown witness.

Meanwhile, using names and other names, namely witnesses of the perpetrators, Law Number 13 of 2006 concerning Protection of Witnesses and Victims juncto Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims already arrange for the crown witness. In Article 1 number 2 of Act Number 13 of 2006 which has been amended by Law Number 31 of 2014 above, it is stated that witnesses of the perpetrators are suspects, defendants or convicts who work together with law enforcement to uncover a crime in a case that same.

Provisions for the protection of witnesses as stipulated in Article 10 and Article 10A of Law Number 13 Year 2006 in conjunction with Law Number 31 Year 2014 concerning Protection of Witnesses and Victims, can be used as a reference in the framework of renewal of the forthcoming KUHAP. Moreover, in Article 200 of the 2010 Criminal Procedure Code the signal has been signaled that there will be and the need for witness witness arrangements individually. Such regulation will provide more certainty in the application of law by law enforcement officials, especially judges in criminal justice practices because their legal basis is formally and legally regulated.

Only thing that needs to be noted is the regulation of Article 200 of the 2010 KUHAP Bill is still inadequate, so it still needs to be improved through collaboration with various other relevant laws and regulations, for example by Law Number 13 of 2006 concerning Protection of Witnesses and Victims juncto Law Number 31 Year 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims who are perceived to be more advanced in their arrangements

²⁶ Second research interview (continued) with the Head of the Manokwari District Prosecutor's Office on Monday, 18 December 2017 at 11.22 WIT at the Main Room of the Manokwari District Attorney General's Office.

²⁷ Vide Romli Atmasasmita. (2011). *Sistem Peradilan Pidana Kontemporer*. Jakarta: Kencana Prenada Media Group. pp. 271.

regarding protection of crown witnesses. Or it could also be an option to adopt the provisions of an international agreement between the government of the Republic of Indonesia and other countries or international organizations or the United Nations which has been ratified through several national legislation and has become a source of law in Indonesia. Of course here is needed elaboration that is substantially in accordance with the framework of the national legal system based on the philosophy and ideology of the state of Pancasila.

3.3.2. Setting the rights and obligations of the crown witnesses specifically and limitatively

As explained earlier in sub-section 1 concerning the regulation of crown witnesses in the renewal of the KUHAP above, the translation needs to be regulated regarding the rights and obligations of the crown witnesses specifically and limitatively. In the description above, there has also been an opening way to start paving the way towards renewal of the Criminal Procedure Code as stipulated in Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Protection of Witnesses and Victims.

Specific and limited regulation regarding the rights and obligations of crown witnesses will be the main way to resolve the issue of position and role in proving criminal cases. So far the crown witnesses have caused polemics, both at the academic level and empirical practice which still gave birth to the pros and cons of the dichotomy. To eliminate the dichotomy, it is very relevant to regulate the rights and obligations of the crown witnesses as referred to above.

We need to refer to the provisions stipulated in the Witness and Victim Protection Act mentioned above as stipulated in Article 5 of Act Number 13 of 2006 in conjunction with Law Number 31 of 2014. Noting the rights of witnesses and victims in above, it turns out that it can be seen that specifically and limitatively the rights of the witnesses (crown witnesses) are clear. Such clarity certainly has a positive impact on the process of proving criminal cases, because both investigators, public prosecutors, judges, and other related parties already have legal certainty regarding what can be protected against crown witnesses. Moreover, the judge in the examination of the crown witnesses will pay close attention to the extent to which the protection of the rights of the crown witnesses in proving criminal cases in the court is carried out in accordance with the applicable criminal law legislation.

Renewal of the forthcoming KUHAP adopts mutatis-mutandis changes regarding the rights of victims as referred to above, it can be ascertained that the guarantee of protection to the crown witnesses will be better and more adequate than the current conditions which are still shackled by the pro-dichotomy of cons. In addition to the rights of the crown witnesses described above, it is also necessary to balance the obligation of the crown witnesses to uphold a fair and impartial trial. This means that the crown witness also needs to be burdened with legal obligations relating to the rights that have been given to him. In the perspective of the future it is necessary to formulate the obligation of the crown witness.

Agus Joko Santoso in a research interview with the author stated that the protection of the crown witnesses could be given as long as they contributed to the disclosure of greater crimes. This means that the value of the information given is

directly proportional to the protection provided by law to him. However, all of them must first have legislation governing it, it cannot be done now, because the rules do not yet exist, except for certain criminal acts such as corruption, narcotics, terrorism, therefore, the rights of the crown witnesses should be correlated with their obligations , perspective can be formulated as follows:

- a. a. The crown witness is obliged to provide truthful information, nothing but the truth, so as not to mislead the ongoing judicial process;
- b. b. Crown witnesses are required to have good faith to open the dark veil of crime and the perpetrators are brightly lit, so that the general public feels safe because it is protected from the perpetrators of crime;
- c. c. The crown witness is obliged to not collaborate in giving false information to save his friends and protect the great crimes behind him;
- d. d. The crown witness is obliged to follow instructions or orders from LPSK or other institutions in order to protect themselves, their families and property in accordance with the provisions of the applicable legislation;
- e. e. The crown witness is obliged to follow all judicial proceedings in the framework of him as a witness of the perpetrator, and if he is determined as a suspect because of the information he gives voluntarily, he is obliged to surrender himself to undergo a legal process, in order to clarify a comprehensive problem solving.
- f. f. If the crown witness does not fulfill the obligations accordingly, the protection given to him for the sake of the law must be revoked, and if later he is found guilty he must be punished as fairly as possible.

4. CONCLUSION

The role of the crown witness in the process of proving criminal cases in Indonesia is to find material truth, so that the process of proof is quick and simple, meets the minimum standards of proof, upholds public justice against criminal acts and determines criminal charges against each actor according to his role. Legal protection against crown witnesses in the process of proving criminal cases in Indonesia is inadequate. Future criminal procedural policies related to the examination of crown witnesses in the process of proving criminal cases are deemed necessary and important to renew the provisions of the Criminal Procedure Code. The renewal should be made in the form of regulations that specifically and limitatively regulate the position and role of the rights and obligations of the crown witnesses.

As a recommendation, it is expected that the role of the crown witness will be more effective, so that legal protection is needed for these witnesses by respecting their legal rights as stipulated in national legislation and international law that has been passed by law. In order for the application of the evidentiary law in criminal cases to proceed as expected, it is considered important and urgent to carry out renewal of the Criminal Procedure Code so that the position and role of the rights and obligations of the crown witnesses are known as a reference in its application.

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