

The Crown Witness From the Point of View of Islamic Criminal Law in Truth Discovery of Criminal Cases in Indonesia

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Abstract

This article aims to elucidate Islamic criminal law's point of view on the existence of crown witnesses in the truth discovery of criminal cases in Indonesia. In fulfilling the shortage of witness evidence, one of the perpetrators of the crime was carried as a case witness in the case. This study uses normative research methods by reviewing books relevant to the problem (Library Research) by tracing, comparing, and analyzing normative doctrinal law through a qualitative approach regarding crown witnesses. This study found that Islamic criminal law requires fairness to be accepted as a witness. If a crown witness is indeed needed as evidence to reveal a criminal case without being accompanied by other supporting evidence, then a crown witness is permitted. Should there is other evidence, the crown witness will be disqualified because the crown witness does not meet fair requirements. The rule of law in Indonesia based on the Criminal Procedure Code (KUHP) article 185 paragraph 2 states that the statement of one witness is insufficient to prove a criminal case called the principle of *unus testis nullus testis* (one witness is not a witness). Therefore, there are no other witnesses apart from the crown witness.

Keywords: Crown Witness; Islamic Criminal Law; Criminal Case

Introduction

Indonesia's applicable criminal law is based on positive law, i.e. the Criminal Code (KUHP) and other laws and regulations.¹ In examining witnesses in court, the ability to use crown witnesses in a criminal case aims to discover material truth.² It is based on *unus testis nullus testis*, which means that one witness is not a witness;³ Thus, there are no other witnesses except the crown witness.⁴ The judge decides to conduct a criminal case based on the witness.⁵, having seen and experienced⁶ a crime themselves.⁷ Therefore, the criteria for a crown witness are met. In Indonesian criminal judicial practice, the accused and other defendants who are perpetrators of crimes may serve as witnesses. The witness caused the appearance of the crown witness, and the accused unravelled in the same charge in several cases. In organized crime, there is usually a lack of evidence in the form of court witnesses. Therefore, using crown witnesses is optional in solving crimes like gambling, murder, theft, et cetera.

Interest in the study of crown witnesses was driven by (1) the principle of *unus testis nullus testis*; one witness is not a witness, (2) there is an examination of cases in the form of inclusion,⁸ (3) there is an assumption that it is contrary to human rights, (4) fulfilling the public's sense of justice, and (5) government support in the form of protection for witnesses and victims.⁹

¹ Fauzan Fauzan, 'Alternatives to Criminal Conviction in a Comparative Analysis of Positive Law and Islamic Criminal Law', *Al-Istinbath: Jurnal Hukum Islam*, 7.1 (2022), 185 <<https://doi.org/10.29240/jhi.v7i1.4308>>.

² Mohammad Sofyan Abd. Azis, *Hukum Acara Pidana Suatu Pengantar*, 2nd edn (Jakarta: Kencana Prenada Media Grup, 2017), p. 78.

³ R. Sunarto Soerodibroto, *KUHP Dan KUHLAP Yang Dilengkapi Yurisprudensi Mahkamah Agung Dan Hoge Raad* (Jakarta: PT. RajaGrafindo Persada, 2013), p. 430.

⁴ Habibie Rahman, Lilik Purwastuty, and Dessy Rakhmawati, 'Perlindungan Hukum Terhadap Saksi Mahkota dalam Proses Pemeriksaan Perkara Pidana', *PAMPAS: Journal of Criminal Law*, 1.3 (2021), 120–38 <<https://doi.org/10.22437/pampas.v1i3.11088>>.

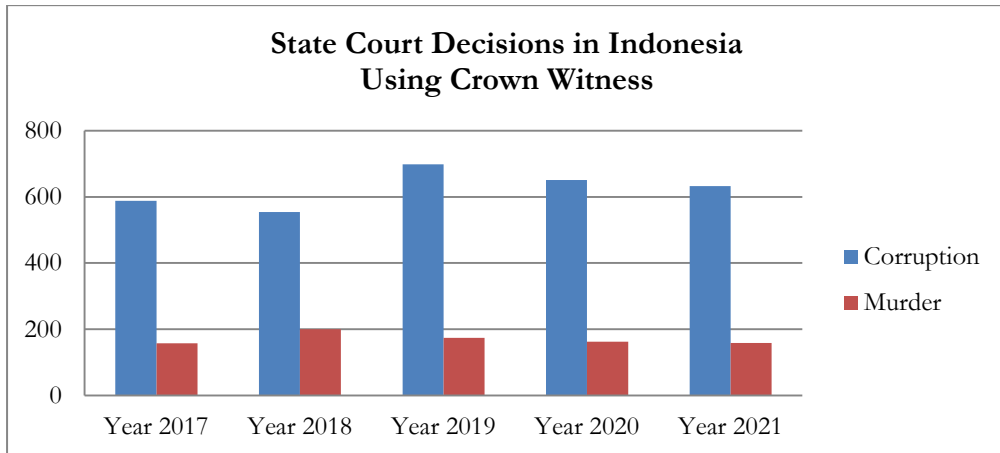
⁵ Gremy Meika Yonea and others, 'Tinjauan Yuridis Kedudukan Saksi Verbalisan Dalam Perkara Pidana', *Mizan: Jurnal Ilmu Hukum*, 10.2 (2021), 190 <<https://doi.org/10.32503/mizan.v10i2.1726>>.

⁶ Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2015), p. 271.

⁷ Marwan Efendi, *Sistem Peradilan Pidana (Tinjauan Terhadap Beberapa Perkembangan Hukum Pidana)* (Jakarta: Referensi, 2011), p. 48.

⁸ Sang Ayu Ditapraja Adipatni and I Wayan Sutarajaya, 'Eksistensi Saksi Mahkota Kaitannya Dengan Splitting Dalam Pembuktian Perkara Pidana', 2019.

⁹ Edi Yuhermansyah, 'Urgensi Perlindungan Saksi Dalam Undang-Undang No. 13 Tahun 2006', *LEGITIMASI: Jurnal Hukum Pidana dan Politik Hukum*, 1.2 (2017) <<https://doi.org/10.22373/legitimasi.v1i2.1427>>.



Graph 1: State Court Decisions in Indonesia using crown witnesses from 2017-2021

By examining the percentage above, the presence of crown witnesses in the evidence is used by judges in determining court decisions. In the 2017-2021 timeframe, the presence of crown witnesses in corruption cases exceeds the number of 500 decisions. In criminal acts of murder, the use of crown witnesses exceeds the number of 100 verdicts. This means that the crown witness is an alternative for the judge as one of the witnesses in uncovering and deciding a criminal case.

In addition to fulfilling the lack of witness evidence, the presence of crown witnesses is strengthened by the Supreme Court Circular Letter: Number 160.a/Bua.6/Hs/SP/XII/2014 that the submission of crown witnesses (in practice) is possible should they meet these requirements: a. The matter is split. b. The accused is informed about their rights and legal consequences as a witness. c. In this case, the evidence is very minimal. With the consideration of these facts, this article hopes to provide important information about the development of crown witnesses as evidence in the settlement of criminal cases in Indonesia

In the Qur'an, witnesses are crucial to reveal the truth.¹⁰. As contained in the letter al-Baqarah verse 282: :

And testify with two witnesses from the men (among you). If there are not two men, then (maybe) one man and two women from the witnesses you are pleased with; therefore, if one forgets, the other one reminds him. And don't the witnesses be reluctant (to give information) when they are summoned?

¹⁰ Ahmad Nashoha, Yusefri Yusefri, and Sri Wihidayati, 'Kesaksian Non Muslim Dalam Putusan Hakim Pengadilan Agama Curup Nomor 571/Pdt. G/2016', *Al-Istinbath: Jurnal Hukum Islam*, 5.2 (2020), 271 <<https://doi.org/10.29240/jhi.v5i2.1837>>.

In the hadith of the prophet *from Abdullah bin Umar Ra, he spoke that the Messenger of Allah said that he should not be a witness to a treacherous man and a treasonous woman and should not be a witness to someone who has hurt their siblings and may not be a witness to a maid against a family in a house which they assist.* (Narrated by Ahmad and Abu Dawud)

The hadith mentioned above emphasizes that it is not permissible to bear witness to a traitor, a liar, and someone who harbours hatred, grudges, and so on against their siblings and servant against their employer, both male and female. The use of witnesses in solving a criminal case is two men who know the incident. With the presence of witnesses, legal certainty will be realized regarding the consequences of the actions committed. Therefore, the benefit of human life will be realized following the objectives of Islamic law.

It is interesting to note the ability of crown witnesses in Indonesian trials to establish the substantive truth of their testimony. Crown witnesses are "insiders" who know that a crime is being committed concurrently. In addition, it protects society from criminal acts to uphold public law. More importantly, criminal procedural solutions must include mitigating witnesses in the Criminal Code.¹¹ It aims to guarantee adequate protection for suspects or defendants as witnesses; thus, applicable laws and regulations protect the suspect's rights.

The discussion of crown witnesses as evidence in criminal cases is contained in several previous studies, i.e., Achmad Saifudin Firdaus and Gousta Feriza (2015), entitled *The Position of the Defendant as a Witness (Crown Witness) Against Other Defendants in a Review of Criminal Procedure Law*. In conclusion, the witness's testimony is considered valid evidence, and based on their testimony, a reduced sentence could be given at the judge's discretion. Furthermore, an article By Deni Setiyawan (2021) titled *The Position of Crown Witnesses in Proving Crimes at Trial Based on the Principle of Non-Self Incrimination*. This research concludes that crown witnesses in proving criminal cases in Indonesia are very vulnerable, especially with the lack of legal protection for crown witnesses. It aims to guarantee adequate protection for suspects or defendants as witnesses; thus, applicable laws and regulations protect the suspect's rights.

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¹¹Lilik Mulyadi, *Putusan Hakim Dalam Hukum Acara Pidana: Teori, Praktik, Teknik Penyusunan Dan Permasalahannya* (Bandung: Citra Aditya Bakti, 2007), p. 79.

Witnesses in Proving Crimes at Trial Based on the Principle of Non-Self Incrimination. This research concludes that crown witnesses in proving criminal cases in Indonesia are very vulnerable, especially with the lack of legal protection for crown witnesses.

As revealed above, in research conducted on witnesses, no one has attempted to examine crown witnesses as evidence in the settlement of criminal cases in a focused, comprehensive, and in-depth manner from the perspective of Islamic criminal law. Therefore, using crown witnesses as evidence in criminal cases is unique. On the one hand, the use of witnesses is still being debated. However, on the other hand, in Indonesian judicial practice, crown witnesses are still being presented in evidence in Indonesian criminal procedural law. Also, there needs to be an explanation about their position in Islamic law because the conditions for witnesses in Islamic law are to be just.

This research is normative through book reviews relevant to the problem (Library Research) and then processed descriptively by tracing, comparing and analyzing normative doctrinal law through a qualitative approach regarding crown witnesses. This means that the fact-finding method is with the correct interpretation,¹² i.e. by determining the steps in data collection. The data analysis technique used is content analysis, from formulating the problem to classifying the required data. This aims to simplify, making it easy to interpret.¹³ Subsequently, a philosophical analysis of the data collected is performed.

This paper aims to uncover two essential things; first, answering the doubts of some Muslims in Indonesia regarding the use of crown witnesses as evidence because it does not fulfil the fair requirements of Islamic criminal law; second, to find reasons for the use of crown witnesses in court and their arrangements in the law.

Discussion

A. The Concept of Crown Witness and Reasons for Its Use

Crown witness comes from the Dutch language, i.e., kroongetuige; crown witness means the testimony of the accused's partner, which usually occurs in participatory events. In Dutch legal practice, a key witness known to be one of the suspects who at least plays a role in a crime, such as a drug offence or terrorism, is then removed from the list of suspects and appointed as a witness.¹⁴ The legal basis is the principle of the prosecution having the possibility to prosecute or not prosecute someone conditionally or unconditionally. In the case of this witness, the condition is that they are willing

¹²Mohammad Nazir, *Metode Penelitian* (Bogor: Ghalia Indonesia, 2005), p. 84.

¹³Imam Suprayoga Tobroni, *Metode Penelitian Sosial - Agama* (Bandung: Remaja Rosdakarya, 2003), p. 97.

¹⁴Andi Hamzah, *Hukum Acara Pidana Indonesia*, p. 271.

to reveal the conspiracy. Such as in Italy, where the Crown Witness Act was constructed. If the accused with the slightest fault in the conspiracy cannot be left alone because their actions are also considered very important. The public prosecutor can negotiate with them; should they be willing to dismantle the conspiracy network, they will be prosecuted, meaning it is easier to commit crimes than their colleagues. Involvement or inclusion is a criminal law term when more than one person is involved in a crime. Thus, their responsibilities must be clarified.

The crown witness is the perpetrator's testimony that usually occurs in that incident or case.¹⁵ According to Hari Sasangka, between the accused and other defendants whose crimes the accused may have witnessed each other. Witnesses presented in this way are called Crown witnesses; at other times, the accused becomes a defendant because of their crime.¹⁶ Also, according to Andi Hamzah, the definition of official witnesses applied in Indonesian criminal justice practices is the definition of all accused. Insofar as the witness was involved, the case is separated, and then "the facts are proven" as a witness. In addition, according to Andi Hamzah, the crown witness has "the lightest role in the implementation of crimes, such as drug crimes or terrorism."¹⁷ The legal basis is the principle that, according to him, the prosecution can sue or not sue someone conditionally or unconditionally.

According to the rules of the crown witness in the Criminal Procedure Code (KUHP), this witness's laxity appears when the case is divided.¹⁸ Essentially, the division of documents that make up a case is usually used by the prosecutor's office in cases where criminal acts are committed in society.¹⁹ In this context, the term crown witness appears, i.e., when a defendant becomes a witness for another defendant regarding the same matter because the crime was committed in the community.

A crown witness in a criminal procedure is a witness whose cause is a symptom or a criminal event that disturbs and greatly disturbs the community and upsets the peace in society. The community desires the perpetrators to be punished according to the applicable law. From this, it can be concluded that the definition of a crown witness is a statement between the accused and

¹⁵Loebby Loqman, 'Saksi Mahkota', *Forum Keadilan*, 1995, 11 edition.

¹⁶Hari Sasangka Lili Rosita, *Hukum Pembuktian Dalam Perkara Pidana* (Bandung: Mandar Maju, 2003), p. 51.

¹⁷Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2008), p. 272.

¹⁸Achmad Saifudin Firdaus and Gousta Feriza, 'Kedudukan Terdakwa Sebagai Saksi (Saksi Mahkota) Terhadap Terdakwa Lain Dalam Tinjauan Hukum Acara Pidana', 12 (2015).

¹⁹I Putu Gede Sumariartha Suara, 'Reformulasi Kewenangan Penuntut Umum Terhadap Penerapan Saksi Mahkota Dalam Pembuktian Tindak Pidana Korupsi', *Jurnal Magister Hukum Udayana* (*Udayana Master Law Journal*), 6.3 (2018), 369 <<https://doi.org/10.24843/JMHU.2017.v06.i03.p08>>.

another accused who committed the crime together. They are used as witnesses and at other times, as defendants.

Examining witnesses in criminal cases is carried out by solving cases. In solving this case, the term crown witness emerged. A crown witness is present when a criminal case is decided. Criminal prosecution in Article 142 of the Criminal Code is usually done by making files, where an investigation must be carried out against the accused and witnesses.²⁰ The concept of case separation is launched to reveal the material truth of a particular criminal incident from the point of view of the prosecutor's investigation interests. Usually, the prosecution is responsible for dividing cases when evidence from witnesses is insufficient, for example, when there is only one or no witness in a criminal case.

According to the author, the crown witness can be interpreted as testimony explained by fellow defendants, which generally occurs in participation events. Thus, it is clear that this crown witness arises in the participation event of a crime committed by one or several people. With involvement in a crime, finding key witnesses to prove the crime is easier. In practice, several people are often involved in a crime. In addition to the perpetrator, one or more people are involved in the commission of a crime such as murder. The act is committed or completed when the act is committed with the participation of all the perpetrators; this is where the term crown witness appears in settlement of a crime that has occurred.

In this case, logically, the responsibility for a crime must be broken down between the perpetrator and the other perpetrators. Every perpetrator of a crime is also responsible for their actions. Thus, they obtain punishment for the actions committed to achieving justice and are given different sanctions because each role in these actions is also different. Examining a criminal case is not looking for a mistake committed by another person but instead seeking and upholding justice for the perpetrators who committed a crime. If regarding from the view of finding culpability, then limping will occur, and the subjective behaviour of the case examination will stand out. Therefore, examining cases will divert from the main objective, i.e., to uphold justice.²¹

The process of examining criminal cases to achieve justice must uphold and respect the existence of human dignity by providing protection and guarantee for human rights. As a human beings, suspects must also be respected for their dignity.

In handling criminal cases in district courts, testimony is essential to

²⁰Deni Setiyawan, 'Kedudukan Saksi Mahkota Dalam Pembuktian Tindak Pidana Di Persidangan Berdasarkan Asas Non Self Incrimination', 2021.

²¹Hendrik F Siregar, 'Perlindungan Hak Tersangka Dari Keterangan Saksi Yang Tidak Dapat Dipercaya', *RECHTSREGEL Jurnal Ilmu Hukum*, 1.1 (2018) <<https://doi.org/10.32493/rjih.v1i1.1925>>.

prove something in the case. In the presence of witnesses, the judge can consider the case as well as possible and then make the fairest and correct decision according to the applicable regulations.²²

Article 183 of the Criminal Procedure Code (KUHP) states that "a judge may not sentence anyone unless satisfied with at least two valid pieces of evidence that the crime was committed and that the defendant did it. Based on Article 183 above, the reasons for using a crown witness are as follows²³ :

1. In a criminal case, based on at least two pieces of evidence. For an accusation to be brought, at least two pieces of evidence must be available. For this reason, the prosecutor's office separated the case files for the crown witness to be presented.
2. The principle of unus testis nullus testis, a witness is not a witness. According to Article 185 (2) of the Criminal Code, witness testimony alone cannot prove the defendant's guilt for the crime they are charged with.
3. Apart from this witness, there are no other witnesses. No one heard, saw, or personally experienced cases committed by the defendant of a crime, except for the crown witness.
4. The judge wants the witness to hear, see and experience the crime themselves. In this case, it was filled in by a crown witness; even this witness demonstrated the crime they had committed themselves. If investigators only provide witnesses, that could be the investigator's design because the investigator's job is to find suspects. To avoid this, witnesses from other parties who are not investigators and have direct knowledge of the crime are used, where a crown witness is required.

Therefore, in uncovering cases organized or carried out by many people, case solving is used to discover the material truth of a criminal act. Therefore, the term crown witness appears because these witnesses are suspected of having committed a crime in the same indictment carried out by the public prosecutor.

B. The Crown's Witness in Finding the Truth According to Islamic Criminal Law

Witnesses in Islam are known as شاهد (male witnesses) or شاهدة (female witnesses)²⁴. Witnesses are people who witness, and their testimony is

²²Ni Made Elly Pradnya Suari, I Made Minggu Widyantara, and Ni Made Sukaryati Karma, 'Kedudukan dan Perlindungan Saksi Mahkota dalam Tindak Pidana Pencurian dengan Kekerasan (Studi Kasus Pengadilan Negeri Denpasar)', *Jurnal Interpretasi Hukum*, 1.1 (2020), 210–15 <<https://doi.org/10.22225/juinhum.1.1.2213.210-215>>. *op.cit*

²³Safaruddin Harefa, 'Penegakan Hukum Terhadap Tindak Pidana Di Indonesia Melalui Hukum Pidana Positif Dan Hukum Pidana Islam', *University Of Bengkulu Law Journal*, 4.1 (2019), 35–58 <<https://doi.org/10.33369/ubelaj.4.1.35-58>>.

²⁴Nashoha, Yusefri, and Wihidayati.

information about what was witnessed by witnesses²⁵. Witnesses or testimony are sometimes a means of evidence to establish the truth of a lawsuit and sometimes as one of the pillars of an event.

The definition of a witness in Islam includes two things. First, a witness is a person present to witness the ongoing/process of a legal event. Second, the presence of the witness is presented to tell a legal event or accidentally witness a legal event and provide information about the event to others (in court proceedings).

There are two legal forms for witnesses to present testimony, i.e.:

1. Before the event occurs

What is meant by providing testimony before the event occurs is the willingness to be a witness in the event. In this case, Allah SWT says;

...وَلَا يَأْتِ الشَّهَادَةُ إِذَا مَا دُعُوا...

... and let the witnesses not be reluctant (to give testimony) when they are summoned ... (al-Baqarah: 282)

The verse above includes the willingness to be a witness and deliver testimony. Willingness to be a witness before the event occurs, its law depends on the level of need for witnesses in the event itself. In an event where a witness becomes one of the conditions for the event's validity, such as the presence of a witness in a marriage contract, the law is fardhu kifayah. As for the person asked to be a witness, the law is fard 'ain.

As for events where the presence of a witness is not a requirement for the validity of the event, the willingness to be a legal witness is circumcised because, with the presence of witnesses, it can be determined that there are rights for a person should a dispute arises about these rights in the future. As an example in doing mua'malah in the word of God:

وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْمُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

If you are on a trip (and not doing mu'amalah in cash) while you don't get a writer, then there should be collateral held (by the debtor). However, if some of you trust others, let that trusted person fulfil his mandate (his debt) and let him fear Allah, his Lord, and do not you (witnesses) hide testimony. And whoever hides it, then indeed he is a sinner in heart; and Allah is Aware of what you do. (al-Baqarah: 283)

2. After the event occurs

According to the shared view, the willingness to be a witness and

²⁵Abu Luis Ma'luf al-Yusu'i, *Al-Munjid Fi al-Lughat*, III (Beirut: Dar al-Masyriq, 1977), p. 406.

provide testimony by people who witness an event is fardhu kifayah. The law that obliges it is the word of Allah in the letter al-Baqarah verse 283 above, which explains that it is forbidden to hide testimony.

In the rules of ushul fiqh, there is a rule which states that²⁶ :

الأصل في النهي للتحريم.

Basically, the prohibition (sighat nahyi) indicates haram".

Rasulullah SAW said regarding Ibn 'Abbas r.a.:

Testimony is the obligation of the accuser, while the oath is the obligation of the person who denies it (HR Baihaqi and Turmudzi)

One of the pieces of evidence that the plaintiff can present is a witness. Thus, the plaintiffs arrange the testimony as evidence to support the lawsuit. This is because the plaintiff is on the weak side and requests something from someone who doesn't feel they have committed the act.

For a witness to be admissible, they must be fair. In fairness, most Islamic scholars say that they obey all the injunctions of the Shari'ah, refrain from all prohibitions, and always refrain from sins, big and small.

عن ابن عباس رضي الله عنه أن النبي صلى الله عليه وسلم قال: البينة على المدعى واليمين على من أنكر. (رواه

البيهقي

والترمذی

Rasulullah SAW said about Ibn 'Abbas r.a.:

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One of the pieces of evidence that the plaintiff can present is a witness²⁷. Thus, the plaintiffs arrange the testimony as evidence to support the lawsuit. This is because the plaintiff is on the weak side and requests something from someone who doesn't feel they have committed the act.

For a witness to be admissible, they must be fair. In fairness, most Islamic scholars say that they obey all the injunctions of the Shari'ah, refrain from all prohibitions, and always refrain from sins, big and small.²⁸. The demands of justice give the judge the discretion to disqualify witnesses based on

²⁶Muchlis Usman, *Kaidab-Kaidab Ushuliyah Dan Fiqhiyah* (Jakarta: PT. Raja Grafindo Persada, 1999), p. 30.

²⁷Zulfan, 'The Crown Witness and the Protection of Human Rights in Criminal Law Verification', in *Emerald Reach Proceedings Series* (Emerald Publishing Limited, 2018), 1, 519–24 <<https://doi.org/10.1108/978-1-78756-793-1-00080>>.

²⁸Lailiyatun Nafisah and Mohammad Muhtador, 'Wacana Keadilan Shahabat Dalam Pandangan Ulama Klasik Dan Kontemporer', *AL QUDS : Jurnal Studi Alquran Dan Hadis*, 2.2 (2018), 153 <<https://doi.org/10.29240/alquds.v2i2.429>>.

bad behaviour or dishonest words.

Shaykh Salih bin Fauzan explained that the sign of justice for witnesses is seen in two things, i.e., first, performing various mandatory. It consists of the five daily and Friday prayers with all the sunnah rawatib. Therefore, the testimony of people who always neglect the sunnah prayers and water is inadmissible. The reason is that the person who leaves the sunnah prayers is a sinful person who always leaves the sunnah; they become a hater of the sunnah and will be vulnerable to various accusations.

The second sign of justice possesses a heroic character. This means all the deeds that adorn them and make them good, such as generosity, noble character, good neighbourliness, staying away from anything that pollutes them and makes them act harshly in the form of despicable things, such as singers and comedians, i.e. people who amuse other people because of their words or actions.

When do all these obstacles disappear from a person? That is when they turn to adults, insane people turn sane, kafir converts to Islam, and wicked people repent. The criterion of wickedness referred to here is an untrustworthy person and a person who maliciously propagates their wickedness openly. Whether or not the testimony of a wicked person is admissible revolves around suspicions about whether or not there is honesty. Someone can be said to be fair to something and can also be wicked to something else. Therefore, if it is clear to the judge that someone is a just person in their testimony, their testimony can be accepted, and their wickedness in another matter is not harmful. In the nature of justice, a crown witness is incompatible with witnesses who have justice.

In the trial process in Indonesia, there is an urgent need for crown witnesses, i.e., testimony between the accused and another accused who committed a crime collectively, then used as a witness and at another time, due to a lack of evidence made as a witness. However, because a crown witness is a necessary means of evidence intended for the benefit of society in determining the sentence for a crime, this is also explained by the following rules.²⁹ :

ما حرم لذاته ابيح للضرورة وما حرم لغيره ابيح للحاجة

What is prohibited is permissible in an emergency, and what is not prohibited is permissible when there is a need.

This problem can be classified as a condition of hajiyat, a condition that is obligatory for humans but does not reach the level of Dharuriyyat. From the method above arises the need to use crown witnesses as evidence; should there

²⁹H.A. Djazuli, *Kaidah-Kaidah Fikih (Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis)* (Jakarta: Kencana, 2006), p. 76.

is no other sufficient evidence, it can be accepted because it is needed to make a decision in a criminal case. The situation of hajiyyat can sometimes be in a Dharuriyat position even though the goal is the human benefit.³⁰ Therefore, Islamic scholars sometimes place hajiyyati at the Dharuriyat level under certain circumstances, as explained in principle.³¹:

الحاجة تُنزل منزلة الضرورة عامة كانت أو خاصة

Hayat (need) is an emergency, both general (everyone) and special (group or individual) needs.

This rule clarifies that leniency not only exists for emergencies³², but is also permissible because of a need.

الضرر يزال

Disgrace must be removed.

Al-Quran surah al-Baqarah verse 173 explains that:

فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ...

...But whoever is forced (to eat) when he doesn't want to and (also) doesn't cross the line; there is no sin for him. Indeed Allah is Forgiving, Most Merciful.

Because of the verse above, not all coercion turned haram, but coercion where there really is no other way but to do it; in that case, anything that is not halal may be used.

Suppose the crown witness is really required as evidence in a criminal case, such as murder at sea or rebellion, where the punishment is Qishah without other evidence. In that case, the crown witness can be accepted because they are the one who knows and has more experience in that case. This is based on the consideration of the judge. However, should other evidence exist, such as sufficient witnesses, an oath, or confession, the crown witness is not used/liberated as a witness because the crown witness does not meet the requirements of justice. This follows Islamic injunctions that harm must be prevented as much as possible. This rule becomes an impetus for humans to leave mudharat, and then after, they seek to profit.

³⁰ Deri Wanto, Rahmad Hidayat, and R. Repelita, 'Maqasid Shariah's Change as Theory: From Classical to Contemporary Maqasid Shariah', *Al-Istinbath : Jurnal Hukum Islam*, 6.2 (2021), 427 <<https://doi.org/10.29240/jhi.v6i2.3122>>.

³¹ Imam Jalaluddin al-Suyuty, *Al-Asybat Wan Nadhair Fi Qawaid Furu al-Syafi'i* (Semarang: Thoha Putra, tt), p. 62.

³² Mulizar Mulizar, Asmuni Asmuni, and Dhiauddin Tanjung, 'Maqashid Sharia Perspective of Legal Sanction for Khalwat Actors in Aceh', *Al-Istinbath : Jurnal Hukum Islam*, 7.1 (2022), 161 <<https://doi.org/10.29240/jhi.v7i1.3587>>.

The use of crown witnesses as evidence can be seen from the *maslahah* element contained in settlement of a criminal case such as murder, i.e. the sentence imposed on the perpetrator. Because *Maslahah* is the main element in *Maqasid al-Syari'ah*, and soul protection is *Maslahah* at the *Dharuriyah* level.

Crown testimony in Islamic law are questions that require answers because this is the essence of the examination of cases by judges that have been carried out. In trials, crown witnesses must explain events between the accused and other defendants who have committed crimes. Subsequently, they are used as witnesses and sometimes as defendants. Witness leniency is one way for judges to discover criminal acts that have been committed in an organized manner.

Classical books did not discuss crown witnesses as evidence in criminal cases because the use of key witnesses was unknown then. However, another piece of evidence called *النظر أو المعاينة* (examination is required in cases that demand an explanation by the judge) was used to explain the content of the plaintiff's claim. The judge will do this if there is still doubt, evidence, or other reasons. In carrying out an on-site examination, the judge may conduct an on-site examination either at the parties' request in the proceeding or at the judge's initiative, considering the benefit.

In the section on the use of crown witnesses, the author classifies the differences of opinion of contemporary scholars who provide views on the use of witnesses in general, i.e.:

a. Crown Witness can be used as an evidence

Classical books did not discuss crown witnesses as evidence in deciding criminal cases; thus, cleric Abi Umar Yusuf bin Abdullah explained in *al-Kafi fiqh Ahlul Madinah al-Maliki* that the testimony of a group is accepted if it meets people who were also robbed during the bandits were in their group.³³. Accepted as long as it is fair. This means that the testimony of a righteous person between two perpetrators against another perpetrator who also robbed is accepted. Also, other groups commit robbery when there is a sea robbery (pirates). The robber group accepts their testimony because only that group knows about the incident; therefore, it is under emergency law.

The justice referred to in the matter above is the existence of justice in a person who does not have to be an uncorrupted person who can perform Islamic teachings without the slightest bit of disobedience because if that is the case, justice that is meant in this context is hard to obtain. Many problems require proof. Justice is, therefore, relative, measured by the condition of

³³Abi Umar Yusuf bin Abdullah bin Muhammad bin Abdul Birry al-Qurtuby, *Al-Kafi Fi Fiqh Ahlul Madinah al-Maliki* (Beirut: Dar al-Kitab al-Ilmiyat, tt), p. 374.

society, and the justice of the witnesses are people whose justice in small matters is unknown.

In this case, the author concludes that to prove the occurrence of the crime of robbery mentioned above is with a crown witness, i.e., the perpetrator is used as a witness to explain an actual criminal case. However, this kind of testimony is urgent because there are no witnesses other than the perpetrator himself who understand the case.

b. Crown witnesses cannot be used as evidence

For a testimony to be accepted, one who conveys it must be a fair person. Therefore, the testimony of a wicked person cannot be justified and accepted; this is based on the Qurán in surah al-Hujurat 6:

....يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا

O you who believe, if any wicked person comes to you with news, scrutinize them.

In other words, God has also determined that the testimony received is trustworthy. Based on the surah at-Thalaq 2 and the surah al-Baqarah verse 282, i.e.:

(وقول الله تعالى : (وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ) و (مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ

Word of Allah Ta'ala: "And testify from among you two pious witnesses" and "from witnesses that you are pleased with" (al-Thalaq: 2 and al-Baqarah: 282)

The presence of witnesses positively impacts judges, enabling them to resolve cases and make fair and correct decisions. On the other hand, if the witness is confused and dishonest in their statement, it can also complicate the judge's decision and even cause the judge's wrong decision.

False testimony is a grave sin punishable by God. Giving false information means having made a mistake, usurped the rights of others, betrayed others, even betrayed one's conscience, and created enmity and hatred among fellow human beings. Allah SWT said in Surat al-Hajj verse 30

فَاجْتَنِبُوا الرِّجْسَ مِنَ الْأَوْثَانِ وَاجْتَنِبُوا قَوْلَ الزُّورِ...

So stay away from filthy idols and stay away from lying words...

According to the opinion of the priests of the madhhab quoted by Sayyid Sabiq, Imam Malik, Syafi'i, and Ahmad said that a lying witness is punishable by ta'zir, and they are liars. Then Imam Malik added that this person should be shown in mosques, markets, and public places where many people gather as a punishment and to deter others from doing that deed.

Seeing the purpose of testimony and legal sanctions incurred by witnesses who are dishonest or provide false statements will create strong

accountability and encourage witnesses to be honest in their testimony. Thus, a person's responsibility to speak makes them always be fair and honest. However, Islamic scholars differ on the magnitude of the nature of justice itself. According to Abu Hanifah: Justice is sufficient in Islam, and if a person does not understand what is detrimental to their honour and fame, they do not commit criminal acts. However, this only applies to property cases, not hudud cases.

According to Islamic scholars Ibnu Rushd, Shaykh Shihabuddin al-Qalyubi, and Zainuddin bin Abdul Aziz al-Malibari, the requirement for witness justice is an additional attribute of Islamic requirements, i.e. sharia obligations and recommendations, avoiding unlawful and makruh acts and avoiding committing major crimes and not always committing transgression or venial sin.

Undoubtedly, a crown witness is not classified as a fair witness because the witness is a suspect also used as a witness. The crown witness cannot fulfil some conditions. This condition is a condition for the fairness of witnesses, or in Islamic law; it is called al-'Adalah. If the witness does not fulfil these requirements of just, their testimony is inadmissible. The impartiality of this testimony can be seen from the witnesses' behaviour in society. If they often commit crimes, then they are considered an unjust person. Therefore, such a witness's testimony is certainly inadmissible.

Conclusion

This study has found that crown witnesses in criminal cases in Indonesia can be used as evidence; based on the Criminal Procedure Code (KUHP) article 185 paragraph 2 that the statement of one witness is insufficient to prove a criminal case which is called the *unus testis principle nullus testis* (one witness is not a witness), thus there are no witnesses other than the crown witness. In Islamic criminal law, the condition for being accepted as a witness is fair. Thus, the position of a crown witness in proving a criminal case does not fulfil the fair requirements of a witness. However, if a crown witness is needed as evidence to reveal a criminal case without being accompanied by other supporting evidence, then a crown witness is allowed. This testimony is urgent because there is no evidence other than the crown witness who knows about the case. Based on the judge's analysis, this testimony can be accepted in the interests of prosecution and a fair decision. An example, in this case, is robbery at sea (piracy) against another group of robbers, and testimony was obtained from this group of robbers because only this group knew and experienced events that had happened. Should there is other evidence, the crown witness will be disqualified because the crown witness does not meet fair requirements. These witnesses are perpetrators who testify for other perpetrators, in the sense that the person accused of committing the crime has conditions that are not met as witnesses in Islamic criminal law. This condition is a condition for the fairness of witnesses,

or in Islamic law; it is called al-'Adalah.

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