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## The Legal Position of Crown Witnesses as Evidence in Corruption Trials: A Narrative Literature Review

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### ABSTRACT

The use of crown witness evidence can only be seen in criminal cases in the form of participation, and separation of those criminal cases has been carried out since the preliminary examination process at the investigative level. Some parties argue that the use of crown witnesses is permissible because it aims to achieve a sense of public justice. However, some are of the opinion that the use of crown witnesses is not permissible because it is contrary to the basic rights and sense of justice of the accused. This is because the crown witness has the status of a defendant and has the right to remain silent or even the right to give answers that are denied or lie. This review aims to describe the use of crown witnesses and the power of crown witness statements in corruption trials in Indonesia.

### 1. Introduction

As a public legal instrument that supports the implementation and application of material criminal law provisions, Law Number 8 of 1981 concerning the Criminal Procedure Code has its own formulation of an evidentiary system. The formulation of the evidentiary system is useful for supporting the objectives of criminal procedural law, namely to seek and obtain material truth. By achieving material truth, the ultimate goal of criminal procedural law will also be achieved, namely to achieve order, peace, justice, and prosperity in society (Misoki, 2016).

To support the implementation of the formulation of the evidentiary system, the judiciary must be guided

by the principles applicable in the criminal justice process, such as the principle of the presumption of innocence (presumption of innocence), the principle of speedy, simple and inexpensive justice, the principle of opportunity, the principle of open trial to the public, the principle of equality before the law (equality before the law), the principle of legal justice by a judge because of his position and appropriateness, the principle of a suspect or defendant is entitled to legal assistance, the principle that a suspect is seen as a party or subject to a preliminary examination in a limited sense (accusatoir), and the principle of direct and verbal examination of judges. It was further explained that one of the forms of the presumption of



innocence is that the accused, as a subject at every level of examination, is not burdened with the obligation to prove. This is a form of the basic rights of the accused as a consequence of adhering to the principle of examining the accusatory in the Code of Criminal Procedure. Therefore, as a subject under examination, the suspect or defendant has been given the freedom to defend himself/herself against the accusations or charges against him/her. (Dughety et al., 2018).

Often in various trials proving a criminal case, the evidence appears, which is referred to as a crown witness. Basically, the term crown witness is not explicitly stated in the Criminal Procedure Code. However, in reality, we often encounter the use of crown witnesses in trials of a crime. The use of crown witness evidence can only be seen in criminal cases in the form of participation, and separation of those criminal cases has been carried out since the preliminary examination process at the investigative level. In addition, the emergence and use of crown witnesses in criminal cases where separation is carried out are based on reasons due to the lack of evidence to be submitted by the public prosecutor (Beqiri, 2018).

Some parties argue that the use of crown witnesses is permissible because it aims to achieve a sense of public justice. However, some are of the opinion that the use of crown witnesses is not permissible because it is contrary to the basic rights and sense of justice of the accused. This is because the crown witness has the status of a defendant and has the right to remain silent or even the right to give answers that are denied or lie. This is an inherent consequence as a result of the obligation of the accused to take an oath in giving his statement. In addition, according to the provisions of Article 66 of the Criminal Procedure Code, it is explained that the defendant does not have the burden of proof. On the other hand, when the defendant is presented as a crown witness, of course, the defendant cannot give testimony freely because the defendant is

bound by the obligation to provide correct testimony under oath at trial. As a consequence of the violation of the oath, the defendant is threatened with a new indictment in the form of the crime of perjury as stipulated in Article 242 of the Criminal Code. Having a connection with the oath certainly causes psychological pressure on the defendant because the defendant can no longer use his/her right of denial to lie (Berdejó, 2018). Therefore, in essence, the testimony given by the crown witness is equated with confessions obtained using psychological violence. This review aims to discuss the legal position of the crown witness in corruption.

### **The legal position of the crown witness in the corruption criminal justice process according to the criminal procedure law based on Law no. 8 of 1981**

The importance of the position of witnesses in the criminal justice process has started since the beginning of the criminal justice process, namely from the level of investigation by the police. Likewise, in the next process, at the Attorney level up to the court. Based on the theory of evidence in criminal procedural law, the testimony given by witnesses in court is seen as the most important and most important piece of evidence. One of the legal means of evidence in the criminal justice process is the testimony of witnesses who heard, saw, or experienced the occurrence of a crime themselves in an effort to find and find clarity about the crime committed by the perpetrator of the crime (Suari et al., 2020).

In corruption cases, the public prosecutor can present a crown witness in the evidentiary process. The existence of a crown witness is not strictly regulated in the Criminal Procedure Code, but the Criminal Procedure Code does not prohibit the use of a crown witness. The arrangement regarding the crown witness was initially regulated in article 168 of the Criminal Procedure Code, which in principle, explains that the parties who are together as



defendants cannot be heard for their testimony and can resign as witnesses. Article 168 of the Criminal Procedure Code basically does not prohibit people who are jointly suspected of having committed a crime from being witnesses in a criminal case. In contrast to the status of the accused, whose testimony can only be used against himself (Article 189 of the Criminal Procedure Code), the use of the suspect's testimony is not strictly regulated in the Criminal Procedure Code. However, with the times, circumstances in which a witness also becomes a suspect or defendant in a criminal case are possible in practice and are often known as crown witnesses.

This crown witness can be used as witness evidence by the Public Prosecutor based on his authority as regulated in Article 142 of the Criminal Procedure Code by splitting the case file (splitsing). The testimony of the crown witness can be used as evidence in the trial, but whenever possible, it can be supplemented with other evidence in order to meet the evidentiary requirements. In a corruption case committed by several people, the public prosecutor presents witnesses who, in fact, incriminate (de-charge) the defendant (Sitoresmi, 2016; Sugiri et al., 2021).

The proposed crown witness must meet the requirements as a crown witness described above, and his legal position as witness evidence is the same as other witnesses. Because the role of a crown witness is the same as that of an ordinary witness, before the crown witness gives his statement, an oath is carried out according to the provisions of the Criminal Procedure Code with the aim that his testimony will later be used as legal evidence. However, because the position of this crown witness at that time was also a defendant, the judge usually gave a notification that if the testimony he gave later before the court was a lie or false testimony, the witness could be subject to additional sanctions, namely for false testimony which is punishable by Article 242 Criminal Code.

The witness of a defendant who is appointed as a witness in criminal justice practice is known as a crown witness. This crown witness is considered very important if a case has very little evidence, such as a corruption case. Without the presence of a crown witness in the process of proving a case that lacks evidence, it is possible that the case will never be revealed due to a lack of evidence, and the judge cannot decide the case. The testimony of the crown witness himself/herself has a very high weight compared to the statements of other witnesses. This is because the testimony of this crown witness is something he/she saw for himself/herself and he/she did alone with his/her colleagues. However, his/her testimony feels incriminating to other suspects and even himself/herself. The testimony of the crown witness can basically be doubted, and there will be an imbalance and cornering between the defendants. This results in the unfairness of the judiciary. This situation requires judges to be in a neutral position in deciding cases using crown witnesses (Ellison, 2007; Burton et al., 2016).

### **The evidentiary power of crown witnesses in corruption cases**

The evidentiary in this criminal case requires statutory regulations, which are used as guidelines for applying the provisions of criminal procedural law in an honest and appropriate manner. Regarding criminal procedural law, the main reference for law enforcers in Indonesia is Law Number 8 of 1981 concerning the Criminal Procedure Code. Viewed from the perspective of the criminal justice system, the matter of proof is very determinant for every party directly involved in the process of examining a criminal case, especially in terms of assessing whether or not the guilt of the accused has been proven.

The Criminal Procedure Code has determined that the use of evidence is justified to prove the defendant's guilt so that the chairman of the trial, the public prosecutor, the accused, or legal advisers are not



allowed to use evidence beyond the provisions stipulated in Article 184 (1) of the Criminal Procedure Code. What is considered the evidence and what is justified to have evidentiary power is only limited to that evidence. Legal evidence, according to the law in accordance with what is referred to in Article 184 (1) of the Criminal Procedure Code, are witness statements, expert statements, letters, instructions, and statements of the accused.

Not always, witness testimony can be valid as evidence that has the power of proof in examination at trial. With regard to the use of crown witnesses in corruption cases as joint positions, the power of proof is the same as other witnesses if they have fulfilled the requirements mentioned above. The strength of proof of the crown witness in the trial of a crime is the same as other witnesses when the witness' statement has formal legality as a witness. In corruption crimes, the use of crown witnesses is very important because in this crime, it is very difficult to get witnesses who can explain the chronology of a case, and the crown witness here is chosen to be presented to explain the chronology of the case because he was the one who saw, heard and experienced himself at the time of the incident (Riding, 2002).

In corruption cases, the crown witness must fulfill the elements, and the crown witness must also be sworn in. In accordance with the provisions of Article 185 paragraph (7) of the Criminal Procedure Code, if a witness is already under oath, then his statement has valid evidentiary power and can be accounted for, and the statement is declared in court. However, to state the strength of witness evidence, that is, it is left entirely to the conviction of the judge, which will be used and considered whether or not to be used as evidence for witnesses who have evidentiary power. This is related to the strength of proof of witness testimony as valid evidence, namely having independent evidentiary power and the value of the strength of proof depends on the judge.

## 2. Conclusion

The legal position of the crown witness in the crime of corruption as a means of witness evidence and its position is the same as other witnesses based on the judge's assessment and consideration because he has fulfilled the formal requirements for proposing a witness in proving a criminal case. The strength of proof of a crown witness in a corruption case is valid evidence and has the value of evidentiary strength because a crown witness must fulfill the requirements, namely (1) The testimony of a witness must be under oath. This is regulated in Article 160 paragraph (3) of the Criminal Procedure Code; (2) The witness testimony given in court is what the witness saw himself/herself, heard himself/herself, and experienced by the witness himself/herself. This is regulated in Article 1 number 27 of the Criminal Procedure Code; (3) Witness testimony must be given in court in accordance with Article 185 paragraph (1) of the Criminal Procedure Code. The testimony of a witness is considered insufficient. In order to have the power of proof, the testimony of a witness must be supplemented and supplemented with other evidence. This is in accordance with article 185, paragraph (2) of the Criminal Procedure Code.

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