

CHAPTER ONE

INTRODUCTION

A. Background of Research

There are many criminal cases that cannot be resolved within the reasonable period of time in Indonesia. The accumulation of criminal cases has burdened the criminal justice system. In 2018, for example, there were 132,070 old cases that had to be settled together with 6,123,197 new cases. Consequently, the total caseload that must be settled by the Supreme Court and its subordinate judiciaries in that year were 6,255,267 cases. In the end of 2018, there were still 133,813 unsettled cases and therefore they were transferred to the following year in 2019.¹ There are several factors that cause the accumulation of cases in the court including the lack of evidence which lead to the lengthy process of settlement.

As a legal state, Indonesia has several laws to regulate the actions of the society, one of which is criminal law. Criminal law is related to the criminal procedure law which regulates the ways in which the state uses its right to carry out punishments in criminal cases that occur (formal criminal law). Criminal law is public laws; therefore, punishment is imposed with the

¹ Supreme Court of the Republic of Indonesia, Annual Report of the Supreme Court of the Republic of Indonesia 2018. https://mahkamahagung.go.id/files/20190219121709_FA_MA_20119_interactive.pdf, accessed on December 3, 2020, at 4: a.m.

aim of defending the public interest. Its implementation is entirely in the hands of the government. Criminal law also regulates the relationship between individuals and the state.² The function of criminal law in particular is to protect legal interests against despicable acts.³ In general, the function of criminal law is to regulate social life.⁴ Criminal law has the aim of deterring people so that they do not commit a crime, both aimed at frightening the public (*generale preventie*) and scaring certain people who have committed crimes so that they are deterred and not repeat crimes (*speciale preventie*).⁵

The enactment of the national criminal procedural law will certainly lead to many important changes, not only in the practice of criminal justice but also in the development of criminal procedural law science in Indonesia. During its development, HIR at that time adopted an inquisitorial system that considered the suspect as an object.⁶ This system considers that the position of the suspect / defendant is not equal to that of the examiner. In the inquisitorial system, the guarantee and protection of the human rights of suspects and defendants is inadequate, meaning that there are frequent violations of human rights in the form of violence and torture, the treatment of law enforcers against suspects / defendants is still arbitrary. Then the accusatorial system

² Didik endro, 2016, *Hukum Pidana*, Surabaya, Airlangga University Press, P. 5.

³ *Ibid.*

⁴ *Ibid*, P. 6

⁵ *Ibid*, P. 7

⁶ Romli Atmasasmita, 2011, *Sistem Peradilan Pidana Kontemporer*, Jakarta, Kencana Prenada Media Group, P. 35.

was adopted in the Criminal Procedure Code (although not completely). Under this system, the suspect is considered as a legal subject whose rights should be respected. The suspect should be free from any form of arbitrary conducts from the law enforcement officers during investigation process.

In the process of resolution and statement of a judge's decision regarding a criminal act, it must always go through stages of proof, in which a proof contains the intent and attempt to state the truth of an event, so that it can be accepted as a rational how the truth of the event.⁷ Burden of proof is part of criminal procedural law that regulates various types of evidence that are valid according to the law, the system adopted in the evidence, the conditions and procedures for submitting the evidence and the judge's authority to accept, reject and assess the evidence.⁸

There are 5 (five) legal evidence according to the criminal procedure code for the verification process in criminal justice. Based on article 184 of the criminal procedure code, legal evidence includes:⁹

- a. Witness Testimony;
- b. Expert Testimony;
- c. Documentary Evidence;

⁷ Hari Sasangko dan Lily Rosita, 2003, *Hukum Pembuktian dalam Perkara Pidana*, Bandung, Mandar Maju, p. 11.

⁸ *Ibid.*, p. 10

⁹ Law Number 8 of 1981 concerning the Criminal Procedure Code Article 184.

d. Circumstantial Evidence; and the

e. Accused's Testimony,

Witness testimony is one way to prove a criminal case by asking for help from another person called a witness, which is one of the evidence in the criminal procedure code. Based on the order of the five pieces of evidence it can be seen that the witness' testimony ranks first. The term witness as regulated in article 1 number 26 of the criminal procedure code is interpreted:

"A witness is a person who can provide information for the purposes of investigation, prosecution and trial of a criminal case which he heard himself, saw for him and experienced by him"¹⁰

A witness is very important at all stages of the investigation activities, starting from the known criminal action to the criminals proceeding process till getting the judge's decision in the court. Witnesses' testimony is one of the most important pieces of evidence in the resolution of a criminal case. There is no criminal case which can avoid the use of witness testimony as evidence. Almost all evidence of criminal cases always relies on witnesses' examination. One witness who is often used in proving criminal cases is the crown witness. The crown witness is a witness and a defendant who jointly committed a crime with other defendants.

¹⁰ Criminal Procedure Code Article 1 number 26.

The term of crown given to the witness with the status of defendant is in the form of the prosecution being dropped from the case or given a very mild charge if the case is handed over to the court or be forgiven for the mistakes that have been made. Basically, the term crown witness is not explicitly mentioned in the criminal procedure code. The use of evidence of crown witness testimony can be found in criminal cases in the form of inclusion, and the criminal case has been carried out splits since the preliminary examination process at the investigation level. In addition, the emergence and use of crown witnesses in criminal cases carried out by the separation are based on reasons due to the lack of evidence that will be submitted by the public prosecutor. In its concept in Indonesia, a crown witness cannot be acquitted of criminal charges obtained by the defendant if he is found guilty during a trial. However, the information given by the crown witness can be used as a consideration by the judge in relieving the sentence handed down to the defendant because he had given testimony.

The use of crown witnesses is still debatable up to recently. The former Indonesian supreme court judge, Adi Andoyo Soetjipto was one of the parties who opposed the use of crown witnesses as outlined in his book "Welcoming and Executing State Duties to the End: A Memoir" states that the method of proof using the crown witness is not justified and prohibited according to legal studies. Opposition regarding the use of crown witnesses

was also found in the Supreme Court decision No.1174K/Pid/1994 dated May 3, 1995joNo.1592K/Pid/1994 on May 3, 1995 which stated that, examination of crown witnesses should not be carried out because it is against the criminal procedure code which upholds the principles of human rights.¹¹

The criminal procedure code has the objective of protecting the human rights of suspects or defendants. If linked based on Aristotle's theory of justice, forcing a suspect or defendant to admit his mistake is clearly against the spirit and ideals of law, namely to create justice. Because justice is marked by good relations between one another, not prioritizing oneself, but also not prioritizing others, the most important thing is that there is equality. The equality here creates a principle, namely that all people are equal before the law and the principle of giving everyone what is their right. According to the existing laws and regulations in Indonesia, the use and position of crown witnesses in the settlement of a criminal case is still unclear. This can lead to various kinds of juridical problems in the use of crown witnesses.

On the other hand, the crown witness seems to have the potential to open the veil of a crime. It can be seen that many problems exist in the criminal justice system in Indonesia. It has not been able to be resolved this day, such as the lengthy process of the solving the cases, high costs, and the

¹¹ Muhammad Ridwan, "Kedudukan Saksi Mahkota dalam Mengungkap Kasus Pembunuhan", *Responsive Legal Journals*, Vol. 5, No. 5, 2018, p. 14

accumulation of criminal cases at various court levels. The use of crown witnesses can be very helpful in uncovering a crime effectively. The use of crown witnesses can also shorten the time for completion of a criminal case. Moreover, crimes involving several actors who have developed strong bonds with one another and are closed, either through personal connections or business connections or through professional associations, such as criminal acts of corruption and premeditated murder. Contradiction the use of crown witnesses in uncovering a crime is an interesting topic to discuss. Therefore, the authors chose to discuss how the position of the crown witness under the Indonesian criminal justice system.

B. Research Problem

1. How is the position of the crown witness under the Indonesian criminal justice system?
2. How strong is the crown witness testimony in proving murder?

C. Research Objective

1. To find out how is the position of the crown witness under the Indonesian criminal justice system.
2. To find out how strong is the crown witness testimony in proving murder.

D. Research Benefit

The benefits of this research are:

a. Theoretical Benefits:

1. The results of this study are expected to provide additional and insight development in the field of legal science, particularly in the field of criminal law regarding the use of crown witnesses in proving murder.
2. Provide references for further research regarding the use of crown witnesses in the process of proving murder.

b. Practical benefit

This research is expected to be able as a hint for the judges, prosecutor, and apparatus to complete the evidence using crown witness as the witness especially in proving murder.