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Crown Witnesses in Indonesian Criminal Procedure: A Critical Review of Legal Status and Legitimacy

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Abstract

This study investigates the legal status and legitimacy of crown witnesses in the Indonesian criminal justice system a practice still widely used despite lacking explicit legal foundation in the Criminal Procedure Code. The study aims to evaluate whether the crown witness practices aligning with procedural and human rights principles embedded in the Criminal Procedure Code and international law. Using normative legal research with statutory and conceptual approaches, this study analyzes the inconsistency between crown witness practices and Articles 185 and 189 of the Criminal Procedure Code, which clearly differentiate between the roles of witnesses and defendants. Findings reveal that this practice undermines legal certainty, violates the principle of non-self-incrimination in the International Covenant on Civil and Political Rights, and creates a conflict of interest for defendants testifying under oath in related cases. The study concludes that the justice collaborator framework recognized in Supreme Court Circular Number 4/2011 and Law Number 31/2014 offers a more legitimate alternative. It recommends formal codification of witness cooperation in the Criminal Procedure Code reform to uphold fair trial guarantees.

Keywords

Crown Witness, Criminal Procedure Code, Fair Trial, Justice Collaborator, Legal Legitimacy, Non-Self-Incrimination

1. Introduction

The existence of witnesses in the criminal system is a fundamental element in the process of seeking material truth. The Criminal Procedure Code (KUHAP) has expressly regulated the position, rights, and obligations of witnesses in proving criminal acts (Irianto, 2021; Dianti, 2023). However, in criminal practice in Indonesia, a phenomenon has developed that is not explicitly regulated in the KUHAP, namely the existence of Crown Witnesses. Crown witnesses refer to respondents who are made witnesses against other kidnappers in the same case based on a concurrence or *deelneming* relationship (Hajar, 2017; Kabuhung, 2021). This practice creates a legal anomaly because it does not have a strong legal basis in the Indonesian positive legal system, thus giving rise to issues regarding legitimacy and legal certainty. Historically, the concept of crown witnesses originated from the post-Norman Conquest (1066) English legal tradition, where the term Crown describes the power of the kingdom as the owner of authority in the criminal punishment process (Naik et al., 2022; Hudiarini et al., 2023). This concept was later adopted in the Dutch legal system with the term *kroongetuige*, which is normatively regulated in the *Wetboek van Strafvordering* with strict requirements such as a written agreement and limitations on the type of crime (Ariyanti & Ariyani, 2020). In contrast, in Indonesia, the application of this concept is carried out without any capable normative transformation, only through the splitting of case files (splitting) based on Article 142 of the Criminal Procedure Code, which is not intended to legitimize the status of crown witnesses (Marbun et al., 2021).

This gap indicates the existence of regulations in the protection of human rights that are used as crown witnesses. In fact, the Criminal Procedure Code clearly distinguishes between Witnesses and fraudsters, where Witnesses have an obligation to swear an oath and can be subject to criminal sanctions if they provide false information (Article 242 of the Criminal Code), while detectives have the right to remain silent and not be sworn in (Article 189 of the Criminal Procedure Code). When a fraudster is made a Crown Witness, there is an acute conflict of interest because he is confronted with the dilemma between the obligation to provide honest information and the potential to incriminate himself in a separate case (Amin, 2024). Several Supreme Court decisions such as Decisions No. 1986/K/Pid/1989 and No. 1174/K/Pid/1994 are often taken as the basis for the legitimacy of the practice of crown witnesses, but according to legal theory, a jurisprudence is only valid as a source of law if it meets certain requirements such as the existence of *rechtsvacuum*, permanent legal force, and consistency of promises (Assalmani, 2021; Santiago et al., 2024). This confirms that the practice of crown witnesses in Indonesia has not met the legal or ethical standards as required in a modern trading system that upholds human rights and the principle of fair trial (Semendawai & Abdul, 2017; Perezhniak et al. 2021).

Amid efforts to reform criminal procedural law, attention to the position and legal protection of parties involved in the evidentiary process is very important. Instruments such as justice collaborators and whistleblowers have a more adequate legal basis and protection (Gunawan, 2019; Rismilda, 2023), in contrast to crown witnesses whose status is still in a legal gray area (Kando et al., 2024; Saputra et al. 2025). The main problem to be examined in this study is how the existence of crown witnesses in the Indonesian criminal justice system can cause legal dilemmas and violations of the principle of protecting the human rights of fraudsters. The purpose of this study is to critically examine the position of crown witnesses in the Indonesian criminal law system, analyze its conformity with the principles of justice and human rights protection, and encourage the need for strict regulations. The significance of this study lies in its contribution to enriching the discourse on criminal procedural law, especially in overcoming the limitations of norms related to the status of and

providing policy recommendations based on the principles of the rule of law and human rights.

2. LITERATURE REVIEW

The role of witnesses in the criminal justice system is a fundamental element in the pursuit of material truth (Irianto, 2021; Dianti, 2023). In the Indonesian criminal procedure law (KUHAP), the position of witnesses is explicitly regulated, distinguishing clearly between witnesses and defendants (Amin, 2024). However, in practice, a phenomenon has developed known as the crown witness, in which a defendant testifies against fellow defendants in the same case. This concept lacks explicit normative basis in KUHAP, thus raising issues of legitimacy and legal certainty (Hajar, 2017; Kabuhung, 2021).

The concept of crown witnesses originated from the Anglo-Saxon legal tradition following the Norman Conquest of 1066, where the term *crown* represented royal authority in criminal prosecution (Naik et al., 2022; Hudiarini et al., 2023). A similar concept was later adopted in the Dutch legal system as *kroongetuige*, which is strictly regulated under the *Wetboek van Strafvordering* (Ariyanti & Ariyani, 2020). In the Netherlands, the use of *kroongetuige* is limited to serious crimes such as terrorism, requires formal written agreements between prosecutors and defendants, and provides structured compensation such as sentence reductions (Cavagnoli & Peters, 2024). In contrast, Indonesia applies the crown witness concept more loosely without comprehensive legal norms, primarily relying on the case file separation mechanism (splitting) under Article 142 of KUHAP (Marbun et al., 2021).

The primary issue in applying crown witnesses in Indonesia lies in the potential for conflicts of interest, violations of the non-self-incrimination principle, and legal uncertainty regarding the defendant-witness's status (Amin, 2024; Gunawan, 2019). KUHAP stipulates that defendants have the right to remain silent and are not sworn in (Article 189), while witnesses must take an oath and are criminally liable for perjury (Article 242 of the Criminal Code). When a defendant serves as a crown witness, a dilemma arises between the obligation to testify truthfully and the right not to self-incriminate (Perezhniak et al., 2021).

Indonesian Supreme Court jurisprudence reflects inconsistencies on this issue. Some decisions, such as No. 1986/K/Pid/1989, permit the use of crown witnesses provided that the case files are separated, while others, like Number 1174/K/Pid/1994, reject the practice as violating fair trial principles (Assalmani, 2021; Santiago et al., 2024). This inconsistency illustrates a conceptual dilemma in the criminal justice system regarding the validity of crown witnesses.

As an alternative, the *justice collaborator* model offers a more legally valid framework that aligns with human rights principles. The justice collaborator scheme is regulated under Supreme Court Circular Letter No. 4 of 2011 and Law No. 31 of 2014, which provide clear criteria, legal protections, and incentives for cooperating offenders (Hajar, 2017; Rismilda, 2023; Kando et al., 2024). Some scholars propose that this scheme could serve as a model for formally regulating crown witnesses in Indonesia's Draft Criminal Procedure Code, balancing evidentiary needs with defendants' rights (Saputra et al., 2025; Fessinger, 2020).

Moreover, lessons from other legal systems such as the United States with its *state witness* and *plea-bargaining* mechanisms (Yahman et al., 2023; Chandra, 2023), as well as Germany's *Kronzeuge* (§46b StGB), provide important references for the need for legal clarity, compensation, and protection for crown witnesses (Cavagnoli & Peters, 2024). The reform of Indonesia's criminal procedure law should selectively incorporate these comparative law principles while respecting national legal characteristics and adherence to international human rights standards such as the International Covenant on Civil and Political Rights (ICCPR) (Semendawai & Abdul, 2017; Lasaka, 2023).

2. Methods

This study uses a normative legal research method that focuses on the analysis of written legal norms and relevant legal concepts. This method was chosen because the problems studied are related to the validity and legitimacy of the practice of crown witnesses in the Indonesian criminal justice system, which is directly related to the interpretation and coherence of legal norms in laws and regulations. In its implementation, this study uses two main approaches, namely the regulatory approach and the contextual approach. The regulatory approach is carried out by examining and interpreting the regulations that form the basis for the practice of Crown Witnesses, such as the Criminal Procedure Code, Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Protection of Witnesses and Victims, as well as the relevant Supreme Court Circular, especially those relating to justice collaborators and provisions of evidence in criminal cases. The analysis is conducted by assessing the extent to which these regulations regulate or open loopholes for the existence of Crown Witnesses, as well as examining the suitability of these practices with the applicable principles of criminal procedure law.

Meanwhile, a contextual approach is used to examine legal doctrines and the thoughts of experts related to the concept of crown witnesses and justice collaborators as alternative evidence in criminal cases. Through this approach, the study explores how the understanding, purpose, and limitations of the use of crown witnesses are constructed theoretically in criminal law, both in the national context and in comparison, with other legal systems (such as the Netherlands and England). This approach is also used to critically analyze whether the concept of crown witnesses is in line with the principles of fair trial, the principle of non-self-incrimination, and the protection of owner rights. The types of legal materials used in this study include primary, secondary, and tertiary legal materials. Primary legal materials include regulations, Supreme Court decisions, and jurisprudence that have been used as the basis for Crown Witness regulations in judicial practice. Secondary legal materials include legal literature, national and international scientific journals, dissertations, and relevant previous research results. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other sources that can strengthen the context of understanding the issues discussed.

All legal materials collected are then systematized, broken down, and analyzed using a legal hermeneutics approach, namely an interpretation method that considers the historical-philosophical context of the concept of crown witnesses, the development of its practice in Indonesia, and its impact on the overall prison criminal system. Through this in-depth interpretation, the study seeks to produce a complete understanding of the normative issues that arise, as well as to compile academic recommendations that can contribute to the development of criminal procedure law in Indonesia, especially in the normative boundaries and clear legal regulations regarding the use of Crown Witnesses.

3. Results

3.1. Historical Genealogy and Legal Problematics of Crown Witnesses

The study examines the crown witness mechanism in Indonesian and Dutch legal systems, highlighting its origins, implementation, and normative challenges. Originating in the Anglo-Saxon common law tradition, the crown witness concept symbolizes royal authority in justice, designed to tackle organized crime by granting a suspect special status to testify against co-perpetrators in exchange for benefits like reduced sentences. In the Netherlands, the crown witness is a suspect who cooperates with law enforcement to reveal others' involvement in serious, organized

crimes, as regulated by Articles 226g-226k of the *Wetboek van Strafvordering* (Dutch Criminal Procedure Code). These provisions impose strict criteria: crime must be serious, alternative evidence must be absent, and formal agreements between prosecutors and suspects ensure structured compensation, such as sentence reductions. This formalization reflects a response to evidentiary challenges in complex cases, balancing fairness with prosecutorial needs.

In Indonesia, the crown witness mechanism lacks a clear legal foundation, creating a normative anomaly. The Indonesian Criminal Procedure Code does not explicitly regulate crown witnesses, unlike the comprehensive Dutch framework. Article 1 Number 26 of the Criminal Procedure Code, defines a witness as someone who provides information based on personal experience, expanded by Constitutional Court Decision Number 65/PUU-VIII/2010 to include non-direct knowledge, but this does not address crown witnesses. The Criminal Procedure Code distinguishes witnesses, who testify under oath (Article 185), from defendants, who are not sworn and can remain silent (Article 189). The crown witness practice, where a defendant testifies under oath against co-defendants, contradicts the non-self-incrimination principle. Indonesia employs case file separation (splitting) under Article 142 to enable crown witnesses, separating a defendant's case to allow testimony in another's case. However, the Criminal Procedure Code does not designate this mechanism for crown witnesses, raising legitimacy issues. Supreme Court Decision Number 1986/K/Pid/1989 permits crown witnesses if the witness-defendant is in a separate case file, but Supreme Court Decision Number 1174/K/Pid/1994 (May 3, 1995) rejects their validity, citing fair trial violations, reflecting inconsistent jurisprudence.

Court decisions across Indonesian districts show a prevalent use of case file separation for crown witnesses in cases with multiple perpetrators (*deelneming*), often irrespective of alternative evidence. Unlike the Netherlands, where *kroongetuige* use is limited to serious crimes like terrorism, Indonesia applies it broadly across crime types, expanding its scope beyond its original context. Dutch law ensures formal compensation, but Indonesian crown witnesses often receive no clear benefits, undermining the reciprocal nature of the mechanism. This deviation simplifies the concept, reducing its legitimacy. The practice also raises human rights concerns, conflicting with the non-self-incrimination principle under Article 14(3)(g) of the International Covenant on Civil (ICCPR) and Political Rights and Indonesia's 1945 Constitution (Articles 28D (1), 28I (1)), which guarantee fair legal treatment. The justice collaborator framework, defined in Supreme Court Circular Letter Number 4 of 2011 and Law No. 31 of 2014, offers a structured alternative for cooperating perpetrators, suggesting a model for regulating crown witnesses. The Draft Criminal Procedure Code could integrate crown witness provisions with plea bargaining, aligning with modern judicial practices while upholding due process.

3.2. Discrepancy Between *Das Sein* and *Das Sollen* in Crown Witness Practices

In the realm of judicial practice (*Das Sein*), the use of crown witnesses has become an established phenomenon in the Indonesian criminal justice system. Through an analysis of court decisions in several district court jurisdictions, it shows a dominant tendency in the use of the case file separation mechanism (splitting) which culminates in the construction of crown witnesses. Normative legal studies of criminal cases involving several perpetrators (*delensing*) indicate that the use of crown witnesses is a consistent pattern in the evidentiary strategy, regardless of the availability of other alternative evidence or the presence of independent witnesses in the case.

This practice shows a simplification of the concept of crown witnesses from their country of origin. In the Netherlands, crown witnesses are only used in very limited situations and with strict requirements, especially when dealing with serious and organized crimes such as terrorism and transnational crime. In contrast, in

Indonesia, this concept is widely applied to various types of crimes without clear limitations. This has made the practice of crown witnesses in Indonesia have experienced an expansion of meaning far beyond its historical context, thus giving rise to issues of legitimacy in its application.

The deviation of the practice of crown witnesses from its original concept is also seen in relation to the compensation provided. In the Dutch justice system, defendants who become crown witnesses receive the benefit of reduced charges or sentences in return for their willingness to provide testimony. In contrast, the practice of crown witnesses in Indonesia is not followed by formal and structured compensation. Crown witnesses in Indonesian judicial practice are witnesses taken from one of the suspects/defendants, where in the case there are several suspects/defendants, and the witness is then given a crown (exempted from prosecution), but in practice often no compensation is given.

Viewed from a normative perspective (*das sollen*), the practice of crown witnesses creates an anomaly in the Indonesian criminal justice system. The Criminal Procedure Code explicitly distinguishes between the testimony of a defendant who is not sworn in and the testimony of a witness who must be sworn in. Article 189 paragraph (3) of the Criminal Procedure Code states that “the testimony of the defendant can only be used against himself,” while Article 185 paragraph (1) states that “witness testimony as evidence is what the witness states in court.” The construction of crown witnesses through the mechanism of separating case files is substantively a circumvention of this provision, because in essence the testimony of the defendant is used to incriminate other defendants.

Academic perspectives on crown witnesses show fragmentation of opinion among Indonesian legal scholars. The practice of crown witnesses can be justified if it meets certain conditions, especially the difficulty of proof and is carried out through a legitimate case file separation mechanism. Meanwhile, crown witnesses fundamentally contradict the principles of the Criminal Procedure Code and the basic rights of the accused, so they cannot be justified in the context of a state of law that upholds due process of law. Fragmentation of opinion is also seen in the ambivalent jurisprudence of the Supreme Court. On the one hand, there are decisions that justify the practice of crown witnesses, such as Supreme Court Decisions Number 1986/K/Pid/1989 and No. 1174/K/Pid/1994. On the other hand, there are also decisions that expressly reject the validity of crown witnesses, such as Supreme Court Decision No. 1174/K/Pid/1994 dated May 3, 1995, which states that “the use of crown witnesses is a violation of the principle of fair trial.” This inconsistency of jurisprudence shows a conceptual dilemma in the justice system regarding the validity of crown witnesses as an instrument of evidence.

From a human rights perspective, the practice of crown witnesses problematically intersects with the principle of non-self-incrimination and the right to remain silent. These rights are recognized in various international legal instruments, including Article 14(3)(g) of the ICCPR which states that everyone has the right “not to be compelled to give evidence against himself or to be forced to confess his guilt.” The Indonesian Constitution implicitly recognizes this principle through Article 28D paragraph (1) concerning the right to recognition, guarantees, protection, and fair legal certainty, and Article 28I paragraph (1) concerning the right not to be prosecuted because of retroactive law.

As an alternative to the problematic nature of crown witnesses, the concept of justice collaborators has received formal recognition in the Indonesian legal system. Normatively, justice collaborators are defined in Supreme Court Circular Letter Number 4 of 2011 as “perpetrators of certain crimes, but not the main perpetrators, who admit their actions and are willing to become.

4. Discussion

The absence of formal regulations on crown witnesses in Indonesia's Criminal Procedure Code (KUHAP) creates legal uncertainty, leading to inconsistent practices and potential violations of defendants' rights (Amin, 2024). Widiyono. (2022) and Dianti (2023) argue that reliance on law enforcement discretion and judicial interpretation increases the risk of abuse, underscoring the need for comprehensive legal frameworks to uphold due process. Gunawan (2019) highlights that formal regulations must address five key aspects: (1) conditions for using crown witnesses (e.g., serious or organized crimes with evidentiary challenges); (2) legal status, including oath-taking obligations; (3) consequences of testimony for the witness and co-defendants; (4) protection against self-incrimination; and (5) incentives like sentence reductions. Hajar (2017) suggests adopting the justice collaborator model (regulated under Supreme Court Circular Letter Number 4/2011 and Law Number 31/2014) for crown witnesses, given its structured criteria and procedural clarity. Fessinger (2020) notes that integrating crown witnesses into the Draft Criminal Procedure Code could modernize Indonesia's evidentiary system, incorporating plea bargaining and guilty pleas, which are absent in current law. Marbun et al. (2021) emphasize that Draft Criminal Procedure Code must balance evidentiary needs with defendants' rights, aligning with constitutional guarantees under Article 28D (1) (right to fair legal certainty) and Article 28I (1) (protection from retroactive prosecution) of the 1945 Constitution.

Cavagnoli and Peters (2024) compares Indonesia's crown witness dilemma to the U.S. "state witness" system, where immunity agreements and plea bargaining provide legal clarity. Germany's Kronberg (§46b StGB) and the Netherlands' confession-based (Articles 226g–226k Wetboek van Strafvordering) offer viable models, with strict requirements and sentence reductions for cooperative defendants. Nafri et al. (2022) caution that any adoption must consider Indonesia's socio-legal context. Semendawai and Abdul (2017) stresses that reforms must align with human rights principles, as affirmed in Constitutional Court Decision Number 65/PUU-VIII/2010, which safeguards due process. Saputra et al. (2025) propose that RKUHAP adopt a comparative law approach, blending civil and common law mechanisms while ensuring defendant protection. Perezhniak et al. (2021) underscores the need for compliance with international standards like the ICCPR, particularly fair trial rights. (Kabuhung, 2021; Lasaka, 2023) critiques the current reliance on crown witnesses in narcotics and corruption cases, where evidentiary weight often undermines the presumption of innocence. Suparyanto and Rosad (2020) argue that reforms must prevent coercion and ensure testimonial reliability. Marsela et al. (2024) concludes that a *conditio sine qua non* for crown witness legitimacy is explicit legal grounding, mitigating arbitrariness and protecting human rights.

Rismilda (2023) and Rika et al. (2023) advocate for witness protection frameworks akin to whistleblower safeguards, while Jayadi (2020) calls for judicial training to standardize crown witness applications. Santiago et al. (2024) warn that without legislative clarity, Indonesia risks perpetuating inequities in its criminal justice system. In summary, Naik et al. (2022) assert that Indonesia's crown witness reforms must be holistic, integrating comparative insights, constitutional mandates, and human rights norms to ensure fairness and legal certainty. Legal reconstruction of the concept of crown witnesses also needs to consider the perspective of comparative law. In the United States, a concept like crown witnesses is known as "state witness" or "cooperating witness" which is regulated in the Federal Rules of Criminal Procedure and the U.S. Sentencing Guidelines. These regulations include formal mechanisms such as "immunity agreements" and "plea bargaining" which provide clarity regarding the legal status and consequences for defendants who cooperate with the public prosecutor (Yahman et al., 2023; Chandra, 2023). Selective

adoption of formal mechanisms in the common law system can be a reference in developing regulations regarding crown witnesses in Indonesia, while still considering the characteristics of the national legal system.

5. Conclusion

Based on normative legal research on the practice of crown witnesses in the Indonesian criminal justice system, fundamental problems were found related to its formal legitimacy. The concept of crown witnesses originating from the Anglo-Saxon and Dutch legal traditions does not have an explicit basis in the Criminal Procedure Code, so its application through the case file permit mechanism (splitting) is considered to deviate from the provisions of criminal procedure law. The Supreme Court jurisprudence, which is often used as the basis for this practice, also does not meet the requirements for a legal veil (*rechtsvacuum*), considering that the Criminal Procedure Code has comprehensively regulated the status of witnesses and defense attorneys.

In practice (*das sein*), the use of crown witnesses has developed in cases with more than one perpetrator (*deelneming*), but the application of this concept in Indonesia is not accompanied by formal regulations on the requirements, protection, or compensation for detainees who are willing to cooperate. The absence of this regulation has the potential to violate the principle of non-self-incrimination and the right to a fair trial regulated in the ICCPR which has been ratified through Law No. 12 of 2005. The position of the defense attorney as a witness in the construction of crown witnesses creates a dilemma between the obligation to provide information and the interests of self-defense. Alternatively, the concept of justice collaborator is more legally valid because it has a normative basis through Supreme Court Circular Letter Number 4 of 2011 and Law No. 31 of 2014. Therefore, the renewal of the Criminal Procedure Code is an important momentum to comprehensively regulate the use of crown witnesses and justice collaborators, by paying attention to legal certainty, justice, and benefits in handling complex cases.

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