

Analysis of the Ratio Decidendi in Assessing the Strength of Evidence of Crown Witnesses (Case Study of Verdict Number 41/Pid.B/2021/PN Bil)

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Article Info	Abstract
<p>Received: November 12, 2023</p> <p>Revised: December 10, 2023</p> <p>Online available: January 28, 2024</p> <p>Keywords: <i>Ratio Decidendi, Evidence, Crown Witnesses</i></p>	<p>itness testimony is evidence that is often the key word in revealing that a crime has occurred. This research aims to determine the position of the crown witness so that the judge can consider it in proving the crime of assisting in premeditated murder in Decision Number 41/Pid.B/2021/PN Bil. This research is normative legal research that is prescriptive and applied. This research uses a case approach. The legal materials used are primary legal materials and secondary legal materials. The technique for collecting legal materials used in this legal research is literature study. The results of this research show that in Decision Number 41/Pid.B/2021/PN Bil, the crown witnesses were considered by the judge. The use of crown witnesses is permitted while still observing the provisions in nominating crown witnesses. These provisions include the separation of case files, lack of evidence, and criminal acts involved form of participation. The judge's considerations in Decision Number 41/Pid.B/2021/PN Bil which used crown witnesses were in accordance with the provisions of the Criminal Procedure Code. Based on the evidence presented by the public prosecutor which was strengthened by the testimony of crown witnesses, the judge was convinced that the crime had actually occurred and that the defendant was guilty of committing it. The use of crown witnesses in this case can make it easier for the judge to impose a crime on the defendant who helped commit premeditated murder.</p>

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INTRODUCTION

Murder is an act of taking another person's life by deliberately where life is a gift from God Almighty and not one person can also remove it. This action is not in accordance with legal norms applies and there is no justification for the action. Revenge and quarrels, which are sometimes trivial things, are the underlying cause criminal act of murder.

Premeditated murder is ordinary murder as stated in Article 338 Criminal Code, however, it is carried out with prior planning. What is meant is by planning in advance (voorbedachte rade) is where the intention arises to kill with its implementation there is

still time for the perpetrator to do so think calmly, for example thinking about how to kill will be done (Akhyar et al., 2023).

The crime of murder, apart from being carried out individually, can also be committed by several people who helped carry out the murder or so-called with participation (*deelneming*), that is, if a person is involved in something a criminal act or crime is not just one person, but more than that one person as stated in Article 55 and Article 56 of the Criminal Code (Lia & Jumadi, 2022). Article 55 of the Criminal Code (*participate in*) is intended for main actors who have problems with victims, while Article 56 (*helping to commit*) regulates people who know and ask for help to provide an opportunity for action the crime without preventing it. In this case, a helpful do is given one-third of the penalty for those who helped do it if they helped do it fulfills the elements of Article 56 of the Criminal Code (Suprapta et al., 2020)

During the examination in court, to obtain the material truth that if a criminal act has occurred, a proof process needs to be carried out. Proof in criminal procedural law, it is defined as an effort to obtain information information through evidence and evidence in order to obtain a belief regarding whether the alleged criminal act is true or not and whether it exists whether there is any fault on the part of the defendant (Hertoni, 2016). To reveal good facts relating to the perpetrator's actions and the chronology of criminal events the presence of witnesses who saw, heard and experienced it themselves this event was very important. However, if there are no witnesses who meet these criteria, it will be very difficult to reveal the facts of the incident (Siregar, 2015).

Public prosecutors often have difficulty finding evidence can substantiate his accusations. Therefore, the public prosecutor presented witnesses crown in the trial process because the crown witness is one the defendant who is used as a witness in the case is considered to know and experience it the criminal act.

The term crown witness is not mentioned in the Criminal Procedure Code. Nevertheless witness crowns are still often encountered in criminal procedural law practice. In Judgment

Republic of Indonesia Supreme Court No. 1986 K/Pid/1989, crown witness is defined as a friend defendants who have committed criminal acts together are presented as witnesses for prove the public prosecutor's accusations in this case the case was separated because lack of evidence. This decision confirmed the submission of the crown witness where the statement is used as evidence together with the witness's statement another. Based on this decision, the use of crown witnesses is based on certain principles, namely those used in cases of inclusion offenses, lack of tools evidence to be presented by the public prosecutor, and examined with separation (*splitting*) since the preliminary examination process at the investigation level. Separation case file (*splitting*) is carried out because based on Article 168 of the Criminal Procedure Code, the party who together as defendants their statements cannot be heard and they can withdrew as a witness.

Decision of the Supreme Court of the Republic of Indonesia No. 1174 K/Pid/1994 does not confirm its existence the use of crown witnesses because it is contrary to the Criminal Procedure Code which upholds it Human rights. One of the defendant's rights that was violated was the right to recant. Right denial can be used as a defendant not to provide information later it can harm him or himself by giving false information, and convoluted to make a trial long. The defendant's statement is also sometimes changes, but this is not prohibited because of the right to deny oneself defendant. In addition, the defendant has the right to remain silent and not answer questions asked of him. If the defendant is used as a witness the crown is asked questions that will harm him, then the defendant being made a crown witness will not be able to avoid this question. This is because the defendant is in the position of a witness, so the defendant's rights are available on him will disappear (Rahman et al., 2021).

Although it is known in criminal justice practice in Indonesia, the application of witnesses

The crown as evidence gives rise to differences of opinion. Some parties believe that the use of crown witnesses is permissible because they can overcome the problem of the lack of witness evidence in criminal cases and aims to achieve a sense of public justice. However, some argue that use Crown witnesses are not allowed because they violate the principle of non-self discrimination. Principle Non Self-incrimination is mentioned in Article 189 paragraph (3) of the Criminal Procedure Code, which states that The defendant's statement can only be used against himself. Based on In this case, the suspect or defendant has the right not to make an issue himself from the investigation process until the trial process at court.

In the case raised by the author in this article, it is a criminal case helped carry out the premeditated murder carried out by the Defendant Moch Muslik als Codet in Bangil District Court Decision Number 41/Pid.B/2021/PN Bil. In the process proof, the public prosecutor presents crown witnesses. Witness the crown named Kholis Bigi als Paimo and Khusnul Khotimah als Cinul who were fellow students defendant, but the prosecution has carried out separate prosecutions (splitting).

Based on the thoughts above, the author is interested in conducting related research the judge's considerations in assessing crown witnesses as evidence in criminal acts helped carry out premeditated murder in Decision Number 41/Pid.B/2021/PN. Bil.

METHOD

This research is normative legal research that is prescriptive and in nature applied. This research uses a case approach. Legal materials used are primary legal materials and secondary legal materials. Material collection techniques the law used in this legal research is literature study. The analysis of legal materials used by the author is by deduction method, namely a method that starts from a major premise then proposes a minor premise and then withdraws it become a conclusion. According to Philipus M. Hadjon, in logic syllogistic in the deduction method, the major premise is a rule of law while the premise minor is a legal fact. From these two things, something will be drawn conclusions to answer the problems that exist in writing this law (Marzuki, 2022).

RESULTS AND DISCUSSION

Judges in deciding a case must be based on evidence. Proof is the process of convincing a judge about the truth of a proposition or arguments raised in a dispute. The urgency of proof is to gain confidence and with that belief aim to strengthen the truth of the proposition about the legal facts that are the subject of the problem, so that with the fulfillment of this belief the judge will obtain a basis of certainty for make a decision (Samandari et al., 2017).

The evidentiary process is basically more dominant at a court hearing to find out the material truth about the events that occurred and give confidence to the judge about the incident so that the judge can provide the fairest possible decision (Lintogareng, 2013).

The results of this evidence can be used as consideration by the judge decide the case. The aim of the evidence is to obtain facts arising from a criminal case. The judge may not decide on a case only based on objective facts or circumstances, but the judge must actually formulate it his belief in various objective facts and circumstances and beliefs that the defendant is truly guilty. Although the evidence in a the case has met the minimum threshold of proof or even more, if the judge did not reach his belief in the defendant's guilt then he should not have may blame and punish the defendant (Lintogareng, 2013).

Evidence is anything related or related to something acts where the evidence can be used as proof in order to raise the judge's confidence in the truth of the existence of a criminal act the defendant had committed (Prameswari & Yulianti, 2015) The Criminal Procedure Code has regulated valid evidence, namely in Article 184. What is meant by valid evidence is information witnesses, expert statements, letters, instructions and statements from the defendant. Fill in the crown witness it is not yet explicitly regulated in the Criminal Procedure Code. Nevertheless, witness Crowns are still often used in judicial practice in Indonesia. In this case, the public prosecutor charged the defendant Moch. Muslik als Codet with alternative charges subsidiarity where the indictment is then investigate evidence. During the examination process there were other defendants who provided testimony. In this case, the judge plays an important role in determining whether it is used The crown witness can be considered as evidence or not.

The use of crown witnesses as evidence in criminal cases will, of course causes various problems. According to Article 168 of the Criminal Procedure Code, everyone can be a witness except those who are co-accused. Judge and public prosecutor Of course, understand the problem, then solve the problem is by separating case files (splitting) as regulated in Article 142 Criminal Procedure Code. The case files are separated so that there is one defendant and the other others can be used as witnesses. If the case files are not separated, then One defendant and another cannot be used as witnesses. The use of crown witnesses aims to simplify the evidentiary process carried out by the judge in resolving cases submitted to him in a trial.

In the Decision of the Supreme Court of the Republic of Indonesia Number 1986 K/Pid/1989, it was explained that the public prosecutor was not prohibited from presenting crown witnesses at trial with the condition that this witness in his capacity as a defendant is not included in the same case file as the defendant who is giving testimony. The definition of a crown witness is also contained in the decision, namely a friend of the defendant committing a criminal act together are presented as witnesses to prove it the public prosecutor's indictment, some of which were separated due to lack of evidence.

Article 189 paragraph (3) of the Criminal Procedure Code states that the defendant's statement can only be used against himself. The article explains that the defendant has the right not to blame himself from the investigation process until court process. This is what causes differences of opinion to arise in presenting crown witnesses. Based on this article, the defendant cannot give his testimony for others because indirectly he has provide testimony against himself in committing a criminal act accused him.

Apart from these problems, the use of crown witnesses will be very important useful in the proof process. It is hoped that the statements of the crown witnesses will be appropriate because the person concerned knows all the incidents of the criminal act being charged. Without a crown witness, the judge cannot strengthen other evidence shown by the public prosecutor because it is the crown witness who can be used as a guide judge in deciding the criminal case. This is the reason for the lack of evidence making crown witnesses still used in the judicial process.

There are several provisions that must be fulfilled by the public prosecutor if wants to present a crown witness. These provisions include, among others, the existence of separation of case files, lack of evidence, as well as deep criminal acts form of participation. The use of crown witnesses aims to fulfill a sense of justice public. If in a criminal case there is a lack of evidence, then the defendant could be released. If the accused can be presented as a crown witness for trial of other defendants, then they can still be asked to take responsibility for his actions. When the panel of judges has decided to using crown witnesses in the process of proving a criminal case, then this has of course

been considered beforehand by looking at various aspects so that the crown witness is declared valid to have his statement heard as a witness at trial (Sukadana et al., 2018).

In order for a witness' statement to be considered valid, it must meet the requirements to be so witness. These conditions are seeing, hearing or experiencing something for yourself events related to the crime. These requirements can be seen in Article 1 number 26 of the Criminal Procedure Code. The next requirement is that the witness has been sworn in with their respective religions and beliefs, and when giving oaths or his testimony was not under pressure in the sense that the witness was free and aware. The final condition is that the witness has no family, blood, or blood relations marriage or employment with suspects or defendants. If that person has fulfilled the conditions previously mentioned, then the person and his statement can be considered valid before the law.

In the case of helping to commit premeditated murder, the crown witness submitted, namely witness Kholis Bigi and witness Siti Khusnul Khotimah in accordance with Article 1 number 26 KUHP. In providing testimony, witness Kholis Bigi and witness Siti Khusnul Khotimah has been sworn in based on her religious beliefs. Witness Kholis Bigi and witness Siti Khusnul Khotimah also has no family, blood or marriage relationship as well as work with the defendant Moch. Muslim. Based on this, strength evidence from crown witnesses presented by the public prosecutor in the Decision Number 41/Pid.B/2021/PN Bil can be used as witness evidence in accordance with provisions of the Criminal Procedure Code.

Bangil District Court Judge's Decision No. 41/Pid.B/2021/PN Bil who adjudicated the crime of assisting in premeditated murder committed by defendant, the panel of judges in its consideration acknowledged and used testimony from crown witnesses Kholis Bigi and Siti Khusnul Khotimah. Use of witnesses This crown has fulfilled the requirements to be examined as a witness, including Kholis Bigi is a person who committed the crime of premeditated murder and Siti Khusnul Khotimah was the person who helped carry out the murder planned. Kholis Bigi and Siti Khusnul Khotimah were witnesses the crown is justified in the Act. According to Article 1 number 27 of the Criminal Procedure Code, which What is meant by witness testimony is one of the pieces of evidence in a criminal case which is in the form of testimony from a witness regarding a criminal incident that he heard about himself, he saw for himself and experienced it for himself by citing the reasons for that knowledge, Meanwhile, the two crown witnesses in this case are the key witnesses to obtain this prosecute the defendant for the crime of assisting in premeditated murder because no one knows the other witnesses presented by the public prosecutor when the murder occurred.

Based on the trial process, when the public prosecutor presents witnesses Crown during the evidentiary process, there was no objection from the legal advisor defendant. Apart from that, in its considerations, the panel of judges also allowed it use of crown witnesses. Based on this, there are no internal problems the process of examining the crown witness.

Before deciding on a case, the judge always looks at the possible matters becomes a consideration both juridically and outside the provisions juridical to obtain the truth and create justice (Ramadhani, 2022). Article 183 The Criminal Procedure Code explains that a judge may not sentence a person to a crime unless he obtains at least two valid pieces of evidence belief that a crime actually occurred and that it was the defendant guilty of doing it. From the sound of this article, the Criminal Procedure Code adheres to an evidentiary system according to the law negatively. In evidence according to law negatively, a defendant can only be declared guilty if the mistake is made the charges against him can be proven in a manner and with valid evidence according to law and at the same time proof of the guilt is accompanied by judge's confidence.

In the evidentiary process in this case, there were 3 pieces of evidence submitted by public prosecutor, namely documentary evidence in the form of post mortem et repertum, witness statements, and defendant's statement. Even though more than 2 pieces of evidence were presented, the crown witness remained submitted to strengthen other evidence. The crown witnesses presented are Kholis Bigi as the main perpetrator in the crime of premeditated murder and Siti Khusnul Khotimah who helped carry out the planned murder. Witness Kholis Bigi and witness Siti Khusnul Khotimah were able to provide reliable information make it easier for judges in the evidentiary process. Crown witnesses basically used when the public prosecutor lacks evidence. But crown witnesses can also used when the public prosecutor needs witnesses who know details related to the crimes they committed.

The judge's considerations in handing down a decision to the defendant in the case helped carry out premeditated murder using crown witnesses is in accordance with the provisions in the Criminal Procedure Code. Based on existing facts, The judge was convinced that the defendant had committed this act proven legally and convincingly.

CONCLUSION

Based on the explanation stated above, it can be taken conclusion that in Decision Number 41/Pid.B/2021/PN Bil, crown witness considered by the judge. The use of crown witnesses is permanently permitted pay attention to the provisions in presenting crown witnesses. As for the provisions. These are the separation of case files, lack of evidence, and actions the punishment is in the form of participation. Judge's considerations in Decision Number 41/Pid.B/2021/PN Bill which uses crown witnesses is in accordance with the provisions Criminal Procedure Code. Based on the evidence presented by the public prosecutor which was strengthened by crown witness's statement, the judge has obtained the belief that the crime was committed. This had actually happened and the defendant was guilty of doing it. The use of crown witnesses in this case can make things easier for the judge impose a sentence on the defendant who assisted in committing murder planned.

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