

Legal Politics the Position of Witnesses and the Right to Assistance by Advocates in Criminal Cases

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ABSTRACT

The examination of witnesses is very important in the examination of criminal cases, because these witnesses can shed light on a case. A witness is an individual who has direct information about a criminal event. A person is brought forward as a witness because he immediately "hears, sees and experiences" the criminal case. Witnesses are expected to provide information for the purposes of investigation, prosecution, and justice about a criminal case. So important is the position of the witness, so the existence of the witness should be regulated in laws and regulations, including the assistance of advocates when giving information in front of police investigators. This study examines the legal politics of witness regulation in criminal cases, with reference to the Criminal Code. The Indonesian people are waiting for the renewal of the Criminal Code to replace Law Number 8 of 1981 concerning the Criminal Procedure Law. This research concludes that legal politics as shown by the Draft Criminal Procedure Law provides more opportunities for advocates to provide legal services for suspects and witnesses in the examination of criminal cases ranging from the level of investigation in the police to the examination in court.

Keywords: Advocates, Criminal Procedure Law, National Law, Political Jurisprudence, Witnesses,

Introduction

Universally, the examination of witnesses in criminal cases as a legal process is regulated in procedural law. In Indonesia, criminal law procedures are regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The Criminal Code contains provisions regarding procedures, procedures, and requirements that must be complied with and implemented in an effort to uphold law and justice and protect human rights in the enforcement of criminal law. The Criminal Code regulates how to administer Material Criminal Law, so as to obtain judges' decisions and how judges' decisions must be implemented. In the judicial process, law enforcement officials use the Criminal Code as a guideline to carry out their duties.

Currently, the Criminal Code only regulates provisions on the right to assist suspects in examinations at the investigation level at the police, prosecutor's office, and Corruption Eradication Commission (KPK). The Criminal Code does not regulate the right of witnesses to be accompanied by legal counsel in the examination of the level of investigation. The assistance of legal counsel for witnesses in the examination of criminal cases is very important, because not all witnesses understand the legal aspects of a criminal case. Legal counsel must provide an understanding of the relationship between witnesses and criminal cases. A person is required to be a witness in criminal law, because he or she "hears, sees and knows a criminal event". Sometimes when a person is examined as a witness, it can happen that the status of the witness changes to a suspect if the investigator gets evidence about the witness's involvement in a criminal case. Therefore, it is important to have the position of legal counsel in the examination of witnesses.

The right to assist witnesses by legal counsel in the examination of criminal cases can be seen as a "constitutional right and the principle of equality before the law" as guaranteed in the 1945 Constitution of the Unitary State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). As stated in Article 28D paragraph (1), that: "Everyone has the right to fair legal recognition, guarantee, protection, and certainty as well as equal treatment before the law".

This shows that legally, everyone has a constitutional right to equal treatment before the law. Similarly, Article 28G paragraph (1) of the 1945 Constitution, which states that:

"Everyone has the right to the protection of personal self, family, honor, dignity, and property under his or her power, and the right to a sense of security and protection from the threat of fear is recognized as a fundamental right that is a constitutional right (Lies Sulistiani,2023).In line with Indonesia's thinking as a state of law, the 1945 Constitution contains a commitment to guarantee human rights and guarantee all citizens with their equal position in the law (*equality before the law*). Article 27 paragraph (1) of the 1945 Constitution states (Bambang Walyuno,2011):

"All citizens have equal positions in law and government and are obliged to uphold law and government without exception."

The assistance of witnesses in the examination of criminal cases by an advocate also fulfills the taste of justice as the spirit of the 1945 Constitution. The examination of criminal cases through the criminal justice system must of course be based on appropriate legal procedures and those that can be held accountable. One of the important procedures in the examination is the right to legal protection. Legal protection is one of the fundamental rights that every human being has. One of the manifestations of legal protection is the right to legal assistance in every case investigation process. Legal aid has a very important meaning for someone who is dealing with legal problems (Muhammad Rusli Arafat,2019).

Satjipto Rahardjo's thinking on legal protection places the law as a protector of human rights and as a protector of society. With humane and responsive law, justice can be realized and a person can fully enjoy his rights. This approach highlights the importance of making the law a means to create social harmony, where every individual feels safe, protected and can enjoy all the rights granted by the law. In another sense, according to Satjipto Rahardjo, "formulating the concept of justice how to create justice based on balanced values in the form of equality of rights and obligations" (Abd. Razak Musahib, ed., *et al.*,2022).Satjipto Rahardjo's thinking has not been accommodated by the fact that the Criminal Procedure Code does not contain provisions on the right of witnesses to be assisted by legal counsel in the examination of criminal cases. The Criminal Procedure Code currently only provides the right to legal assistance for suspects as stipulated in Article 54 of the Criminal Procedure Code.

The right of witnesses or reported witnesses to be accompanied by legal advisors is not regulated in the Criminal Code, which means placing witnesses in psychological situations is not protected. Psychologically, the witness or reported witness is cut off from legal access in achieving equality and justice. They should be protected by the criminal procedure law. The existence of the Criminal Procedure Code is ideally as an access to criminal justice that builds on equality. These protection values are an obligation that must be obeyed by law enforcers as stipulated in the constitution (*The Republic of Indonesia,1945*).

Protection for reported witnesses or potential witnesses as suspects is an important pillar in creating a fair and balanced justice system. With the presence of legal counsel when witnesses undergo investigations, the legal examination process takes place without pressure or the threat of arbitrary acts for a witness. If the right of advocate assistance is not given to the reported witness or witness, it does not rule out the possibility of injustice in the

examination process. This is detrimental to the reported witness who has the potential to be a suspect.

The presence of legal advisors provides assistance at all stages of the examination process in order to ensure that the legal process runs well. Such a legal process can result in a fair judicial process for the witness or reported witness. Even more so for those who are classified as underprivileged or people who do not understand the law. The public can also defend themselves with the assistance of professional legal advisors (Arifin Pratama Mapia, 2018). In the practice of examining criminal cases, investigators have a different attitude towards the existence of a witness. When a person becomes a complainant witness and as a victim witness, the legal advisor is allowed to be present at the trial of the case. Even legal advisors together with investigators conduct case titles to analyze whether the criminal case report has met the elements of criminal acts as stipulated in the Criminal Code (KUHP). There has almost never been a refusal of the presence of legal counsel in such conditions (Saut Taruli Tua Panggabean, 2024). However, on the contrary, it is not uncommon for legal counsel to be refused assistance for reported witnesses. The difference in treatment does not apply "equality before the law". The Reported Witness should also have the right to be treated the same as the Reporting Witness.

Basically, the main implementation of the state of law is the judiciary, in this case criminal justice. The many criticisms of the settlement of cases in the criminal justice system are a fact. Some adverse facts, such as the judiciary which often takes a long time, is expensive, complicated and is considered to be incapable of meeting the community's sense of justice (Reza Maruffi, 2021). In reality, in the social life of the community, the sense of justice is the embodiment of the ideals and will of the law itself to help. If it can be said that "*summum ius, summa injuria, summa lex, summa crux*" which means a harsh law can hurt, except justice can help it. Thus, although justice is not the only legal goal, the most substantive legal goal is justice (Abd. Razak Musahib, ed., et al., 2022).

One of the problems with the sense of justice in terms of examining witnesses is when the witness being examined has the potential to become a suspect. The concept of a witness who has the potential to become a suspect has begun to be known as the concept of a potential suspect. The concept of a potential suspect is contained in the Constitutional Court Decision Number 21/PUU-XII/2014 mentioned in its legal considerations. Therefore, it is very important when the witness being examined must be completely protected for his or her rights. One of the efforts to maintain the rights of witnesses is the presence of legal advisors. However, the current provisions in the Criminal Procedure Code do not apply to witnesses. The Criminal Code does not allow legal counsel to accompany witnesses in the examination stage of the investigation. The Criminal Code only provides the opportunity for legal counsel to assist suspects in the Minutes of Examination with limited provisions. Legal counsel is only to see and hear during the examination as stipulated in Article 54 of the Criminal Code. Meanwhile, the provisions for legal advisor assistance for witnesses are not regulated in the Criminal Code (Abd. Razak Musahib, ed., et al., 2022). Therefore, Wirjono Prodjodikoro argues that the legal interests of individuals in this case are the parties who obtain the arrest and detention of suspects must be considered and protected. This is to close the opportunity for arbitrary action against witnesses from law enforcement officers.

Efforts to strengthen the protection system through the granting of the right of reported witnesses to be accompanied by legal advisors require a strong commitment from the government and legal institutions. Strong support from the community is also needed to realize civilized justice. The protection of the reported witness is a manifestation of "Indonesia is a country of law (*reschtaat*)" based on Article 1 paragraph (3) of the 1945 Constitution. In the nature of *reschtaat* as a written law, it will bring legal truth and justice to law enforcement.

At the time of writing this paper, the House of Representatives of the Republic of Indonesia (DPR-RI) was finalizing the discussion of the Draft Criminal Code to replace the current Criminal Procedure Code. In the political perspective of the law, if the revision of the Criminal Procedure Code is carried out, it is a legal choice that will be taken by the Government and the House of Representatives of the Republic of Indonesia to answer the needs of legal practice from a practical perspective and provide legal certainty for citizens from an ideal aspect. At the time of writing, Commission III of the House of Representatives of the Republic of Indonesia is discussing the Criminal Procedure Bill with stakeholders, including advocates and legal academics.

Methods Research

Based on the problems studied and the choice of data sources used in this study, the researcher uses normative legal research (Soerjono Soekanto and Sri Mamudji,1985). The normative legal research method, as understood in the legal literature, is research that refers to the legal norms contained in laws and regulations and court decisions. To obtain data in this research, the researcher conducted a literature research by collecting primary, secondary and tertiary legal materials, such as concepts, doctrines, legal rules and laws and regulations related to this research (Soerjono Soekanto and Sri Mamudji,1985).

As a normative law research, this study examines written law from the aspects of theory, history, philosophy, comparison, structure and composition, context and material, general explanation from article to article, formality and binding power of a law but not binding on its applied aspects or implementation. Statute *Approach*, this approach is carried out by examining laws and regulations related to the problems (legal issues) being faced. This legislative approach, for example, is carried out by studying the consistency/conformity between one law and another. Conceptual *Approach*, This approach starts from the point of view of pandangan dan doktrin-doktrin yang berkembang di dalam ilmu hukum. Pendekatan ini menjadi penting sebab pemahaman terhadap The views/doctrines that develop in law can be a foothold for building legal arguments when resolving legal issues at hand.

This study also applies a combination approach between normative legal research and empirical legal research. Normative-empirical legal research is a methodology that examines legal norms in a theoretical context (*in abstracto*) while also considering practice in concrete legal events or events. In this context, although this study focuses on the analysis of norms, the main attention is still paid to the legal phenomena that occur, especially related to the political dynamics of the law that underlie the formation of the Criminal Code and the preparation of the Criminal Procedure Bill as a revision of the Criminal Procedure Code.

The approach taken in this study is a *legal politics approach* aimed at exploring and analyzing the deliberative processes that took place in the formation of the 1981 Criminal Code and the revision of the Criminal Code. Through this approach, this research will explore various factors, both in terms of legal substance and socio-political context, that influence legislation decisions and the final outcome of the law-making process. By utilizing these two approaches, the research is expected to provide a more comprehensive understanding of the interaction between legal norms and realities on the ground, as well as the implications of regulatory changes on legal practice and society. Thus, the results of this research will not only contribute to the study of the law, but also to the development of public policies that are more effective and responsive to the issues faced in the context of the legal process.

To strengthen this study, the researcher also examined the problem from the perspective of *comparative law* (Kondrad Zweigert dan Hein Kotz,1988). Legal comparison is intended as an effort to compare one legal system with another. A legal comparison can also be made between the regulation of "the right of witnesses to be accompanied by a lawyer in

the examination of criminal cases" between Indonesia and the criminal law system in other country(s). The researcher will examine written legal documents, including the Minutes of the House of Representatives of the Republic of Indonesia on the Discussion of the Draft Law on Criminal Procedure and the Draft Law of the Criminal Procedure Code. The document is researched with the intention of knowing the implementation of legal concepts, doctrines, and applicable legal principles. Research of legal documents will help to understand how legal choices are made by the Government and the House of Representatives (Myra A. Harris,2016). Legal politics is a fundamental policy that directs, shapes, and determines the content of the law to be developed. This fundamental policy includes aspects of law formation, law implementation, and law enforcement itself (Padmo Wahjono,2016).

Results and Discussion

Position of Witnesses and the Right of Assistance by Advocates in Criminal Cases According to Law No. 8 of 1981 concerning the Criminal Procedure Code

In criminal cases, witnesses have an important legal position as valid evidence. The limitations of the definition of "*witness*" are regulated in Article 1 number 26 of the Criminal Code, namely:

"A witness is a person who can provide information for the purposes of investigation, prosecution and trial about a criminal case that he hears himself, he sees for himself and he experiences himself". Witness testimony is one of the five valid evidence in the criminal procedure law, as stipulated in Article 184 paragraph (1) of the Criminal Code, namely (Republic of Indonesia,1981): "Valid evidence is:

- a. the testimony of witnesses;
- b. expert testimony;
- c. letters;
- d. instructions;
- e. Defendant's statement.

The central position of witnesses in criminal cases can be seen from the provisions of Article 183 of the Criminal Code, which: "*the judge may not impose a criminal sentence on a person unless with at least two valid evidence*". One of the pieces of evidence is "*witness testimony*", which will lead the judge to a conviction to make a verdict that "*the crime did or did not occur and the guilty defendant did or did not do it*". As Article 183 of the Criminal Code regulates the conditions for judges to punish the defendant, namely with at least two valid pieces of evidence accompanied by the judge's belief that the defendant did it. Referring to an important position, witnesses also have an obligation to give evidence in court, and non-compliance can lead to sanctions. Witnesses play an important role in the criminal justice process, from the investigation stage to the court decision. Witness statements, both incriminating and mitigating, can be the key to uncovering the truth of a criminal event. Before giving evidence, witnesses are required to take an oath or promise according to their respective religions, which states that they will give true testimony. A witness's testimony can be considered legally valid as evidence if it meets a number of requirements, both formal and material. According to the Criminal Procedure Code, the requirements for being a witness include:

1. Legal ability, unless the law specifies otherwise;
2. The witness must not have a direct blood relationship with the relevant party;
3. The witness must not have a husband/ wife relationship, even if they are divorced;
4. Witnesses are required to take an oath before giving evidence.

The presence of witnesses in criminal cases is very important to be one of the evidence, so that a person after being legally summoned must "*face an investigator or judge in a trial*".A

person called as a witness must be present, unless there is a valid reason to avoid examination as a witness according to the summons. The Panel of Judges can order the Public Prosecutor to appear before a person to be present to give evidence in the trial. Such a witness examination call is usually accompanied by a "Warrant to Bring the witness.". Article 160 paragraph (3) of the Criminal Code stipulates that a witness statement can be considered valid if it has met the applicable provisions, namely before giving evidence, a witness must first take an oath or promise. Article 160 paragraph (3) states: "Before giving evidence, witnesses are obliged to take an oath or promise according to their respective religious ways, that he will give true testimony and nothing other than the truth". Article 168 of the Criminal Code restricts anyone who can be a witness who gives testimony under oath in the examination of criminal cases. Article 168 states:

"Unless otherwise provided in this law, he shall not be heard and may resign as a witness:

1. blood or blood relatives in a straight line up or down to the third degree of the defendant or who are jointly as defendants;
2. siblings of the defendant or who are jointly as defendants, siblings of the mother or siblings, as well as those who have a relationship due to marriage and children of the defendant's siblings up to the third degree;
3. the husband or wife of the defendant or divorced or who is jointly as a defendant." Article 171 of the Criminal Code regulates the prohibition of taking an oath as a witness, that those who may be examined to give evidence without oath are:
 1. Children who are not yet fifteen years old and have never been married;
 2. People are memory sick or mentally ill even though sometimes their memory is good."

The role of witnesses in each level of criminal case investigation can be explained as follows:

1. **Investigation Stage:** Witnesses provide information to investigators to help uncover criminal events.
2. **Prosecution Stage:** The public prosecutor uses witness statements to compile indictments.
3. **Evidentiary Stage:** Witnesses give testimony at the trial to assist the judge in deciding the case.

From this presentation, it is clear that witnesses play an important role in the criminal justice process, starting from the investigation stage to the court decision (Hukumonline.comm2024). Witness statements, both incriminating and mitigating, can be the key to uncovering the truth of a criminal event. A witness in a criminal case provides information for the purpose of investigation and prosecution of a criminal case that he hears, sees, or experiences himself as stipulated in Article 1 number 26 of the Criminal Code. A witness's testimony can be considered legally valid as evidence if it meets a number of requirements, both formal and material. According to the Criminal Procedure Code, the requirements for being a witness include (*Republic of Indonesia,1981*):

1. Legal ability, unless the law specifies otherwise;
2. The witness must not have a direct blood relationship with the relevant party;
3. The witness must not have a husband/wife relationship, even if they are divorced;
4. Witnesses are required to take an oath before giving evidence.

In giving his testimony, the witness is obliged to provide information based on the facts of what he saw, heard, and experienced himself, not his personal opinion or conclusion. Witness statements must also not contradict common sense. During the examination, witnesses have the right to receive polite treatment, receive legal protection, and refuse to provide information that could risk themselves or their families related to a criminal case. There are a number of classifications of witnesses in a criminal case, with each position on an

event that is "heard, experienced and known" and a witness on the basis of his expertise, namely:

1. Fact Witnesses

Witnesses who give information about criminal events that he hears, saw, and experienced himself. Fact witness testimony can be one of the evidence in a criminal case.

2. Expert Witnesses

Witnesses who have special expertise/proficiency in a certain field and provide information according to their expertise/proficiency. Expert witness testimony is also evidence in criminal procedure law.

3. Victim Witness

This witness gave information about the events they experienced themselves for the actions of the suspect/defendant.

4. Justice Collaborator

Witnesses who assist or cooperate with law enforcement officials in uncovering and providing information on a criminal act and returning assets/proceeds of the crime.

5. Crown Witness

This witness is an expansion of the definition of a witness as stipulated in Article 1 number 26 of the Criminal Code. The crown witness is the testimony of one of the perpetrators (*defendants*) who jointly committed the crime. It must also be explained that this crown witness is an "*important and unique*" position. For more details, the position of the crown witness will be explained in the following statement:

1. The crown witness is a witness from one of the defendants who jointly committed a criminal act;
2. The term crown witness is an expansion of the Constitutional Court Decision Number 65/PUU-VIII/2010 related to the material test of Law No. 8 of 1981 concerning the Criminal Procedure Law. The Constitutional Court's decision states that witness testimony is not always what is heard, seen, and experienced by oneself;
3. The crown witness is not listed in the Minutes of the Examination, but the existence of this witness is known and is commonly submitted as evidence. In practice, the crown witness is used as an inclusion (*deelneming*), used as a witness against other defendants due to the lack of evidence;
4. Because it is inclusive, the case file of the crown witness who is also a suspect/defendant in a criminal case must be separated from other suspects/defendants (*splitsing*), so that one defendant can be a witness against the other defendant;

Although in practice, crown witnesses have been used in the criminal case of the corruption case of the former Governor of Bank Indonesia, Syahril Sabirin in the Bank Bali case and the criminal case of former Chairman of the Corruption Eradication Commission Antasari Azhar, the Supreme Court Decision No. 1174 K/Pid/1994 dated May 3, 1995 *in conjunction with the* Supreme Court Decision No. 1592 K/Pid/1994 dated May 3, 1995 stated that the examination of crown witnesses was contrary to procedural law and human rights. The Criminal Code also regulates the rights and obligations of witnesses, which are as follows:

Obligations and Rights of Witnesses

A witness has a number of obligations, namely:

1. Fulfill the obligation to come to the trial and give his testimony. The provisions of **Article 224 of the Criminal Code** explain that if a witness deliberately fails to fulfill his obligations, he is threatened with a prison sentence of 9 months (for criminal cases) and a prison sentence of 6 months (for other cases).

2. Swear according to their respective religion that the witness will give true information and nothing other than the truth, before giving his or her testimony (**Article 160 paragraph (3) of the Criminal Code**).
3. If deemed necessary by the court, witnesses are also obliged to swear or promise after completing their testimony (**Article 160 paragraph (4) of the Criminal Code**).
4. Remain present at the trial after giving his statement, unless the presiding judge of the trial gives permission to leave the trial (**Article 167 of the Criminal Code**).
5. It is forbidden to converse during the hearing (**Article 167 paragraph (3) of the Criminal Code**).

Meanwhile, the rights of witnesses include the following:

1. Summoned as a witness by the investigator with a valid summons and the right to be informed of the reason for the summons (**Article 112 paragraph (1) of the Criminal Code**).
2. The right to be examined at his place of residence if the witness can give a proper and reasonable reason that he cannot come to the investigator (**Article 113 of the Criminal Code**).
3. Have the right to provide information without pressure from anyone or in any form (**Article 117 paragraph (1) of the Criminal Code**).
4. The witness has the right to refuse to sign the minutes containing his statement by giving a strong reason (**Article 118 of the Criminal Code**).
5. The right not to ask questions that ensnare witnesses (**Article 166 of the Criminal Code**).
6. The right to an interpreter if the witness does not understand Indonesian (**Article 177 paragraph (1) of the Criminal Procedure Code**).
7. The right to a translator if the witness is mute and/or deaf and unable to write (**Article 178 paragraph (1) of the Criminal Code**).

Witness Rights Related to Protection

Every witness must be protected in accordance with the provisions of Article 5 paragraph (1) of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims *in conjunction with* Law Number 31 of 2014, which stipulates that witnesses and victims have the right to:

1. Obtain protection for the security of his personal, family, and property, and be free from threats related to the testimony that he will, is being, or has given.
2. Participate in the process of selecting and determining the form of protection and security support.
3. Provide information without pressure.
4. Get a translator.
5. Free from ensnaring questions.
6. Getting information about the development of cases.
7. Getting information about court decisions.
8. Getting information in the event that the convict is released.
9. Her identity is kept secret,
10. Getting a new identity;
11. Getting a temporary place of residence.
12. Getting a new place to live.
13. Obtain reimbursement for transportation costs according to needs.
14. Get legal advice.
15. Obtain temporary living expenses assistance until the protection deadline ends.
16. Getting assistance.

The protection and fulfillment of the rights of witnesses is provided from the beginning to the end of the investigation stage. Then, in certain circumstances, witnesses can request the protection of LPSK (*Witness and Victim Protection Institution*) since the application is submitted. The Criminal Code regulates the procedures for criminal law enforcement in Indonesia, starting from investigation, investigation, prosecution, examination in court, to the implementation of court decisions (Lady Arianita,2025). The Criminal Procedure Code also regulates the rights and obligations of parties involved in criminal proceedings, including suspects, defendants, and victims.

What is the future direction of legal politics related to the position of witnesses and the right to witness assistance by advocates in criminal cases in the Criminal Procedure Code Bill

Lemaire argues that the politics of law includes the study of law related to the science of positive law (aan de positief rechtswetenschap verwante rechtsstudie). Lemaire argued that legal politics is part of legislative policy. Legal politics is part of political science in general. Legal politics examines how the law should be determined (*ius constituendum*). Positive legal studies do not stop at the study of applicable law. The study of positive law always raises questions about what law should be, or what law is expected.

Utrecht said that the politics of law determines the law that should be. Legal politics seeks to make rules that will determine how humans should act. Legal politics investigates what changes must be made in the law that is now in force in order to be in accordance with social realities (*sociale werkelijkheid*). Based on Bellefroid's opinion, Utrecht stated that politics made an *ius constituendum* that would later apply a new *ius constitutum*. Oppenheim also gave an understanding of the politics of law. Menurut Oppenheim hukum adalah "a body of rules for human conduct within a community which by common consent of this community shall be enforced by external power.

The state of law is formulated in Article 1 paragraph (3) of the 1945 Constitution stating that "The State of Indonesia is a state of law" [vide Article 1 Paragraph (2) and (3) and Article 28 paragraph I paragraph (5) of the 1945 Constitution]. The characteristics of a democratic state of law embody the life of a state that has a commitment to the appearance of the law as the holder of control in the implementation of democratic government. The consequence of the "spirit of the *rechstaats*" is that government actions must always be based on the law and provide legal protection of citizens' rights, including rights in due process. Indonesia as a country of law, all aspects of its life must be based on existing legal provisions and apply with the culmination in the Constitution. The Constitution contains the legal joints in a country. These legal joints also contain the basics of legal politics. The Republic of Indonesia is a country that relies on the basic law in the Constitution. Therefore, the investigation of political law must be based on the Constitution (C.S.T. Kansil and Christine S.T. Kansil,2014). Furthermore, every law enacted in Indonesia must reflect the ideals of the law (*rechtsidee*) and the ideals of the state (*staatsidee*). The orientation of law formation must lead to the ideals of the law (*rechtsidee*) and the ideals of the state (*staatsidee*) (Heriyono Tardjono,2016).

The judicial process "that is fair and honest and independent" is part of the spirit of the state of law as contained in Article 1 paragraph (3) of the 1945 Constitution. The protection and fulfillment of witness rights is an important part of a fair justice system. The goal is to ensure that people who provide testimony or important information in legal cases do not fall victim to threats, intimidation or arbitrary treatment that could hinder the judicial review process. In the legal context, witness protection not only ensures the physical and psychological safety of witnesses, but also ensures that the judicial process runs smoothly and

justice is achieved for all parties involved. Protection and fulfilment of rights saksi adalah elemen penting dalam sistem peradilan yang berkeadilan. By ensuring that witnesses can testify freely without fear, the legal system not only respects human rights, but also strengthens the integrity and credibility of the judicial process. All of these noble legal ideals are regulated in the Criminal Procedure Law, or the Criminal Code (KUHP). (Republic of Indonesia, 1981).

At the time the 1981 Draft Criminal Procedure Code was made, the Government together with the House of Representatives of the Republic of Indonesia (DPR-RI) saw a need to make the necessary legal products at that time. The preparation of the Draft Criminal Code Bill was impeded by the incident of "murder without a real killer", but there is no legal umbrella to respond to the problem. There is no legal mechanism to address the problem of "murder without a real killer". A very interesting event was the confession of the real killer in a murder incident with "two defendants" who had received prison sentences that had permanent legal force. Starting from the vacancy of the regulation to review criminal judgments that have been in force with permanent law, a Draft Criminal Procedure Code was made to regulate the mechanism "Extraordinary legal remedies for review of criminal judgments that have been in force with permanent law". The Government's decision to make the Criminal Procedure Bill at that time was a manifestation of legal politics.

The Criminal Code emphasizes more on efforts to protect the rights of suspects and defendants in criminal cases. Protection of suspects' rights is provided in the form of new legal remedies in the form of pre-trial. A pre-trial application was filed by the suspect arguing that "the arrest, detention and determination of the suspect was unlawful". A single judge will examine the "Pre-trial Application" in the speedy court system. As the Respondent, it is an institution of law enforcement officials, it can be the police or the prosecutor's office or also the Corruption Eradication Commission (KPK). The applicant requested that the Court decide that "the arrest, or detention or determination of the suspect is unlawful". The applicant can be the person (s) who is arrested, or the person(s) who are detained, or the person(s) who are designated as suspects in a criminal case. The judge will decide whether "the arrest, or detention or designation of the suspect is unlawful", or otherwise "the arrest, or detention or designation of the suspect is lawful". The legal process will continue if the judge decides that "the arrest, or detention or determination of the suspect is lawful". On the other hand, if the judge decides that "the arrest, or detention or determination of the suspect is unlawful", then the legal proceedings being sued must be stopped.

The Sengkon and Karta cases inspired the adoption of the Criminal Procedure Code. Sengkon was sentenced to 12 years in prison, while Karta was sentenced to 7 years. The case of Sengkon and Karta is a wrongful arrest incident that occurred in 1974 in Bojongsari, Bekasi. They were accused of robbery and murder of a married couple, Sulaiman and Siti Haya. Although they pleaded not guilty and were tortured by the police into confessing, they were still convicted and imprisoned. This case is in the spotlight because of the injustice experienced by Sengkon and Karta, and is a turning point in the birth of the Review (PK) mechanism in the criminal law system in Indonesia. The legal remedies of the PK were introduced in the Criminal Code. However, in the development of practice, the provisions of criminal procedure law cannot stop at regulating "the rights of the suspect or defendant" only, but must also regulate the right of witnesses to be accompanied by a lawyer during examination at the investigation level. Various incidents in the context of law enforcement have proven that the Criminal Code must also regulate "the right of witnesses to be accompanied by legal counsel in examinations at the investigation level at the police, or prosecutor's office, or at the KPK. A legal advisor will help the witness to understand the legal construction of the criminal case that the investigator will ask about. The assistance of

advocates will also make the witness feel more protected. Investigators should not examine witnesses who make witnesses feel pressured or intimidated. The presence of legal counsel will make the examination of witnesses will take place in a smooth and unstressed atmosphere for witnesses.

Here are some important points regarding the background of the birth of the Criminal Code (Gina Raudhatul Jannah,2024):

1. **Unification and Codification of Laws:**

The Criminal Procedure Code is the result of efforts to unify (unify) and codify (bookkeeping) the criminal procedural law which was previously spread across various regulations, including the HIR and Dutch inheritance rules.

2. **Legal Updates:**

The Criminal Procedure Code replaces old rules that are considered no longer in accordance with the times, especially in terms of human rights protection and judicial processes.

3. **Human Rights Protection:**

The Criminal Procedure Code pays special attention to the protection of human rights in the criminal justice process, such as the right of suspects to be accompanied by legal counsel, the right not to be arrested without clear reasons, and the right to a fair trial.

4. **Legal Certainty:**

5. The Criminal Procedure Code aims to create legal certainty in the criminal justice process, by providing clear and detailed rules regarding law enforcement procedures, from investigation to execution of court decisions.

6. **Influence of the Criminal Code on the Criminal Code:**

The Criminal Code was born after the Criminal Code (Criminal Code) and is an integral part of the criminal law system in Indonesia.

7. **Pretrial:**

The Criminal Procedure Code introduces a pretrial institution that functions to supervise the investigation and prosecution process, as well as provide legal protection for suspects.

8. **Pretrial:**

9. The Criminal Procedure Code introduces extraordinary legal remedies in the form of review in criminal cases, thereby providing legal protection for defendants who are convicted without strong evidence and there is a misrepresentation of the judge.

However, in the development of legal practice, it is still necessary to revise the Criminal Code, especially related to the regulation of advocate assistance for witnesses examined in criminal cases. The argument of the importance of assisting legal counsel for a witness in the examination of criminal cases is the basis for this research choice. The researcher will convey a legal construction building on the problem. The reference for problem analysis is based on the theory of Legal Politics. Likewise, the existence of the 1981 Criminal Code and the plan to revise the Criminal Code is a legal policy. Lawmakers make a law or revise a law as a choice of lawmakers' policy.

Revision of the Criminal Code 1981

The new Criminal Code will later be together with the national Criminal Code into a series of criminal law and criminal procedure laws. The new Criminal Procedure Code will become a "legacy for the Government of President Prabowo and the House of Representatives of the Republic of Indonesia 2024-2029, especially Commission III of the House of Representatives of the Republic of Indonesia." The new Criminal Procedure Code will become a pillar of strengthening law enforcement to realize material and formal truth in the context of achieving justice in the "criminal justice system". This new Criminal Procedure Code is

expected to give birth to the principle of balance in the integrated criminal justice system. The Criminal Code is a formal law that operates the enforcement of the Criminal Code as a material law. The Criminal Procedure Bill is considered more accommodating, because it has accommodated the aspirations of various circles of society. From the perspective of the change, the change is the protection of human rights for both suspects, defendants, witnesses and victims. This concept is in line with the spirit of the constitution as contained in Article 1 paragraph (3) of the 1945 Constitution. Indonesia is a democratic country of law, because it relies on the law (*rechstaats*) and not solely on power (*machstaats*).

In law enforcement practice, often, especially the examination of criminal cases, is colored by things that are contrary to the principle of the state of law *rechtsstaat* based on equality before the law. For example, do not hesitate to commit despicable acts such as intimidation and persecution of witnesses or suspects to pursue confession in the examination process. In addition, from the parties who are facing legal proceedings, there is a neglect of their rights, including the protection of dignity and dignity as individuals who contain the values of human rights and justice based on the concept of the state of law. This is based on the fact that there is often a disease of arrogance of power in law enforcement officials or the arrogance of power which plunges into the valley of desecration and tyranny (Yahya Harahap: 2006). The Criminal Procedure Bill which is currently being drafted is still being discussed in the House of Representatives of the Republic of Indonesia (DPR-RI) with the hope of a revision of the criminal procedure law that provides more protection to the parties in criminal cases. The new Criminal Code is expected to provide more protection for witnesses and give a role to advocates to accompany the examination of witnesses since the examination at the police.

Although the Criminal Code currently contains quite detailed regulations on the rights of suspects and defendants, such as the right to legal counsel, the right not to be tortured, and the right to a fair trial. However, the same is not found in the witness rights regulations. The existence of a witness in the context of his right to protection does not have a clear legal basis for receiving adequate protection, both physical, psychological, or legal such as the right to be accompanied by legal counsel. This fact points to an imbalance in the criminal justice system, where the position of witnesses facing threats, pressure, or intimidation is often ignored. As a result, witnesses are reluctant to testify or unable to speak honestly and freely, which ultimately affects the quality of the trial itself.

Although there is no provision in the Criminal Code that prohibits witnesses from being accompanied by legal counsel, in practice it is highly dependent on the permission policy of the investigator. Sometimes witnesses are allowed to be accompanied by their legal counsel, sometimes they are not. In practice, not all investigators allow witnesses to be accompanied by legal counsel. Legal provisions in events are often interpreted as prohibitions; If it is not regulated in the law, it means it is not allowed (O.C. Kaligis, Prof. Dr, 2016).

The action of investigators who do not allow a witness to be accompanied by legal counsel, is not only a violation of a person's human rights, but also a form of revocation of a person's civil rights to be able to bind a power of attorney agreement to a legal counsel. Investigators sometimes forget that a witness has civil rights. A grant of power of attorney from a legal subject to a legal advisor is a civil agreement, as stipulated in the Civil Code (Civil Code). In addition, the questions asked by the investigator are often very technical and emotionally torturous to the witness so that the presence of legal counsel is necessary to prevent irregularities by the investigator. In fact, it is possible for a witness to be designated as a perpetrator of a criminal act, either as the main perpetrator, the accompanying perpetrator or the *uitlokker*.

New hopes for witness protection in criminal cases are the entrance to strengthening the protection of human rights in the New Criminal Code. The regulations on witnesses in the New Criminal Code will be a form of legal politics in criminal justice. The next discussion is how the political perspective of law in strengthening the right of witnesses to be accompanied in every level of examination in criminal cases, starting from examination in the police to trial.

This new Criminal Code will strengthen the role of advocates. Advocates will be able to accompany witnesses and victims from previously only accompanying suspects. Advocates can also accompany witnesses and victims. In the old Criminal Code, the advocate only accompanied the suspect. If in the 1981 Criminal Procedure Code advocates can only hear and see examinations, then the new Criminal Procedure Code stipulates that advocates can object if there is intimidation of the client they are accompanied. In this new Criminal Procedure Code, the duties of advocates will no longer be limited to recording and listening during examinations. The Criminal Code is designed to prevent violence in the examination, because surveillance cameras will be placed in every examination. The new Criminal Code prevents as much as possible the occurrence of violence or torture in examinations.

Conclusion

Based on the research and discussions that have been carried out, it can be concluded that the following things can be concluded:

1. The Position of Witnesses and the Right of Assistance by Advocates in the Criminal Procedure Code (Law No. 8 of 1981) The legal politics reflected in the Criminal Procedure Code (KUHP) Number 8 of 1981 regarding the position of witnesses and their right to assistance by advocates are partial and not comprehensive. The Criminal Code explicitly only regulates the right to legal counsel assistance for suspects/defendants (Article 54), while for witnesses, the regulation is not found. This condition creates legal uncertainty and vulnerability for witnesses, especially reported witnesses who have the potential to change their status to suspects. Although the position of witnesses is central as a valid piece of evidence (Article 184 paragraph (1)) and a determinant of the judge's conviction (Article 183), this is not balanced by the guarantee of adequate procedural protection at the investigation stage. In practice, the presence of legal counsel to accompany witnesses depends on the discretionary policy of the investigator. The absence of this arrangement has the potential to cause *inequality* and create space for pressure or intimidation during the examination process, which can ultimately affect the quality and truth of witness statements.
2. Future Legal Political Direction in the Criminal Procedure Bill Future legal politics contained in the Criminal Procedure Code Bill show a progressive paradigm shift. The Criminal Procedure Bill is mandated to accommodate the strengthening of the constitutional right of witnesses to be accompanied by advocates from the investigation stage, which is in line with the guarantee of equality before the law (Article 28D paragraph (1) of the 1945 Constitution) and self-protection (Article 28G paragraph (1) of the 1945 Constitution).

The political direction of this law aims to:

- a) Realizing balance in the integrated *criminal justice system* by providing equal protection to all parties.
- b) Strengthen the role of advocates from passive to active, including the right to raise objections to prevent irregularities during examinations.
- c) Increase the credibility of the judicial process by ensuring a stress-free examination atmosphere.

- d) Minimize abuse of authority by the authorities through supervision and transparency mechanisms.

Thus, the revision of the Criminal Code is a manifestation of legal politics that is responsive to the principles of the rule of law and the protection of human rights. The recognition of the right to advocate assistance for witnesses in the Criminal Procedure Bill is considered a strategic step to realize a fairer and more dignified criminal justice process.

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The names of the two defendants are Sengkon and Karta. The case of Sengkon and Karta is a wrongful arrest incident that occurred in 1974 in Bojongsari, Bekasi. They were eventually acquitted by a Review hearing in 1980.

The Republic of Indonesia, the 1945 Constitution of the Republic of Indonesia, especially the provisions in Article 1 paragraph (3), Article 27 paragraph (1), Article 28 D paragraph (1) and Article 28 G paragraph (1).