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PROTECTION OF WITNESSES AND VICTIMS IN THE PROCESS OF PROVIDING EVIDENCE IN COURT

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ABSTRACT

Witness and victim protection is a fundamental aspect of the modern criminal justice system, serving to ensure justice, truth, and legal certainty. This study uses a normative juridical approach to analyze the forms of legal protection, obstacles to its implementation, and efforts to optimize it within the context of the Indonesian criminal justice system. The study found that witness and victim protection is regulated through various legal instruments, including Law Number 31 of 2014, the Criminal Procedure Code (KUHAP), and the Regulation concerning the Witness and Victim Protection Agency (LPSK). These forms of protection include physical, psychological, and socioeconomic protection. However, its implementation still faces structural, procedural, and implementation barriers. The study concludes that optimizing protection requires harmonization of laws and regulations, increased capacity of implementing agencies, and strengthened commitment from all stakeholders. These efforts are crucial for creating a justice system that is responsive to the fundamental rights of witnesses and victims, while simultaneously increasing the effectiveness of law enforcement in Indonesia.

KEYWORDS

Witness Protection;
Victim Protection;
Proof; LPSK; Criminal
Justice System;
Justice

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INTRODUCTION

The criminal justice system is a state instrument for enforcing the rule of law and protecting the public from unlawful acts. In this context, witnesses and victims play a crucial role as providers of information regarding criminal incidents being examined in court. Without witness testimony and victim protection, the law enforcement process will struggle to achieve true justice (Mertokusumo, 2007).

However, in practice, witnesses and victims often face threats, intimidation, and psychological pressure during the judicial process. This situation results in many witnesses being reluctant to testify, and victims receiving inadequate legal protection. Therefore, the state enacted Law Number 31 of 2014 concerning Witness and Victim Protection and established the Witness and Victim Protection Agency (LPSK) as a form of legal protection for witnesses and victims.

Several previous studies have discussed witness and victim protection in the criminal justice system. Agustine (2018) examined witness protection from a human rights perspective and concluded that legal protection for witnesses is a crucial component of guaranteeing citizens' rights. Wardani (2019) found that victims still face psychological and administrative barriers in the process of providing evidence in court. Meanwhile, Ramdhani and Syukriawati (2020) stated that the implementation of protection by the LPSK (Lembaga Penida Witness and Victim Protection Agency) is still hampered by limited resources and inter-agency coordination.

Based on previous research, there is still a lack of studies that specifically address witness and victim protection in the courtroom evidence process. Therefore, this study aims to analyze the forms of legal protection, obstacles to its implementation, and efforts to optimize witness and victim protection in the Indonesian criminal justice system.

The criminal justice system is an important instrument owned by the state in order to enforce the law, maintain public order, and provide protection to the community from various forms of crime. (Atmasasmita, 2011). In its implementation, the criminal justice system involves various institutions, such as the police, prosecutors, courts, and correctional institutions that work in an integrated manner to achieve the goals of the law, namely justice, legal certainty, and benefit. However, the success of the criminal justice system is not only determined by law enforcement

officers, but is also greatly influenced by the presence of witnesses and victims as parties who know, experience, and feel directly a crime.

Witnesses play a crucial role in the process of proving evidence in criminal cases. In Indonesian criminal procedure law, witness testimony is one of the primary pieces of evidence, as stipulated in the Criminal Procedure Code (KUHP). Witness testimony often serves as the basis for judges' determination of whether a person is guilty or not in a criminal case (Prinst, 2003). Therefore, without witnesses providing honest, clear, and uncompromising testimony, the law enforcement process will face difficulties in uncovering material truth.

In addition to witnesses, victims of crime also hold a crucial position in the criminal justice system. Victims are individuals or groups who directly suffer losses due to a crime, whether physical, psychological, economic, or social (Gosita, 2004). In practice, victims often experience multiple layers of suffering. Not only do they suffer from the consequences of the crime, but they also have to face a lengthy, complex, and exhausting legal process. It's not uncommon for victims to feel neglected in the judicial process because more attention is focused on the perpetrator.

In the past, the criminal justice system tended to be offender-oriented (Waluyo, 2016). The primary focus of the justice system was directed toward punishing perpetrators, while victims' rights and witness protection received insufficient attention. As a result, many witnesses were afraid to testify due to threats, intimidation, or pressure from certain parties. Furthermore, victims often lacked adequate protection and reparation for the suffering they experienced.

These issues demonstrate that witness and victim protection is a crucial component of realizing a just and humane criminal justice system. Without adequate protection, witnesses may be reluctant to provide truthful testimony due to fear of the risks they may face. Similarly, victims may lose trust in law enforcement officials and the justice system if their rights are not met.

International awareness of the importance of witness and victim protection has grown since the emergence of various international legal instruments emphasizing respect for human rights. One important milestone was the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations in 1985. The Declaration affirms that victims of crime have the right to access justice, fair treatment, restitution, compensation, and necessary assistance.

In Indonesia, efforts to protect witnesses and victims are realized through the establishment of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, which was later updated by Law Number 31 of 2014. This law provides a stronger legal basis for the protection of witnesses and victims in the criminal justice process. In addition, the state also established the Witness and Victim Protection Agency (LPSK) as an independent agency tasked with providing protection and assistance to witnesses and victims.

The establishment of the LPSK (Lembaga Penitentiary and Victim Protection Agency) represents a significant step forward in the Indonesian legal system, demonstrating a paradigm shift in the criminal justice system. The justice system no longer focuses solely on punishing perpetrators but also begins to consider the rights and interests of victims and the safety of witnesses. Protection of witnesses and victims is part of the effort to ensure due process of law that respects human rights.

Despite having a legal basis and dedicated institutions, the implementation of witness and victim protection in Indonesia still faces various obstacles. In practice, many witnesses still receive threats after providing testimony in legal proceedings. Victims also often experience difficulties in obtaining restitution and compensation. Furthermore, budget constraints, lack of coordination between institutions, and low public understanding of the rights of witnesses and victims present specific obstacles to the implementation of protection.

Therefore, a study of witness and victim protection in the Indonesian criminal justice system is crucial. This study aims not only to understand the applicable legal regulations but also to analyze the effectiveness of their implementation and find solutions to various existing obstacles. Thus, the Indonesian criminal justice system is expected to provide optimal protection to witnesses and victims, thereby achieving substantive justice.

METHOD

Research Approaches and Types

This research uses a normative juridical approach, which involves examining written legal materials, including legislation, court decisions, legal literature, and other legal sources relevant to the research topic. This approach was chosen because the research aims to analyze and describe witness and victim protection as regulated in Indonesia's positive legal system.

Sources and Types of Legal Materials

This research uses primary and secondary legal materials. Primary legal materials include: (1) The 1945 Constitution of the Republic of Indonesia; (2) The Criminal Procedure Code (KUHP); (3) Law Number 31 of 2014 concerning Witness and Victim Protection; (4) Government Regulations and other Regulations related to the LPSK and witness-victim protection; and (5) relevant court decisions. Secondary legal materials include scientific journals, reference books, legal articles, theses, and dissertations that discuss the topic of witness and victim protection.

Material Collection Techniques

Legal materials were collected through a systematic literature search of laws and regulations, law books, scientific journals, and other sources available in libraries, online databases, and internet searches. Material collection was conducted using documentation techniques and a review of literature sources relevant to the research theme.

Material Analysis

The analysis of legal materials was conducted qualitatively using a descriptive analytical approach. Each statutory regulation, literature, and legal concept was analyzed in depth to determine its substance, meaning, and application in the context of witness and victim protection. Legal interpretation was conducted using various interpretation methods, including grammatical, systematic, historical, and teleological interpretation, to produce a comprehensive understanding of applicable legal norms.

RESULTS AND DISCUSSION

RESULTS

1. Legal Protection for Witnesses and Victims in Evidence

A witness is a person who can testify in court about a criminal incident they experienced, witnessed, or heard that is relevant to the case being examined. Meanwhile, a victim is a person who has suffered physical or mental suffering and/or economic loss as a result of a crime. Both categories have crucial legal significance in the evidentiary process, as their testimony is often the primary evidence in uncovering the material truth in a criminal case.

Protection of witnesses and victims is an important aspect in the theory of legal protection put forward by Philipus M. Hadjon. Legal protection is protection provided by law to prevent or overcome losses by providing legal means, both preventive and repressive. (Hadjon, 1987). In the context of witnesses and victims, legal protection

aims to: (1) prevent threats, intimidation, and acts of violence against witnesses and victims; (2) provide psychological recovery and rehabilitation for those who experience trauma; and (3) ensure their fundamental rights are protected during the judicial process.

2. Legal Basis for Protection of Witnesses and Victims

Protection of witnesses and victims in the Indonesian criminal justice system has a strong constitutional foundation. Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the right of every person to protection of themselves, their families, their honor, their dignity, and their property under their control, as well as the right to a sense of security and protection from the threat of fear to do or not do something. This constitutional provision provides a strong foundation for the formation of laws and regulations that protect witnesses and victims in the judicial process.

At the operational level, the Criminal Procedure Code (KUHP) has regulated several provisions regarding witness protection, albeit to a limited extent. Article 66 of the KUHP authorizes judges to hear witness testimony without the defendant present if there is a concern about intimidation. More comprehensively, Law Number 31 of 2014 concerning Witness and Victim Protection is the primary legal instrument specifically regulating the forms of witness and victim protection in criminal justice processes in Indonesia.

3. Forms of Legal Protection

Law Number 31 of 2014 regulates various forms of protection that can be provided to witnesses and victims, including:

a. Physical Security Protection

Physical security protection is the measures taken to prevent direct threats to the bodily integrity of witnesses and victims. This protection includes physical safeguards such as escort by security officers, placement in a secure location, and arrangements to ensure safety during the judicial process. The Witness and Victim Protection Agency (LPSK) has the authority to provide this physical protection in accordance with Article 18 of Law Number 31 of 2014.

b. Psychological Protection

Psychological protection aims to reduce the trauma and psychological stress experienced by witnesses and victims. This protection includes counseling, professional psychological support, and assistance during the judicial process. This assistance is crucial given that many witnesses and victims experience post-traumatic stress disorder (PTSD) or other psychological conditions as a result of the criminal incidents they experienced or witnessed.

c. Socio-Economic Protection

Socioeconomic protection includes financial assistance, living allowances, and restitution for economic losses suffered by victims of crime. This assistance is crucial to ensure that victims are not further burdened financially by the case, allowing them to return to normal life more quickly.

d. Confidential Identity and Testimony Without Facing the Defendant

For certain high-risk cases, the LPSK can request the court to allow witnesses to testify without appearing directly with the defendant or through other means that protect the witness's identity. This is regulated in Articles 67, 68, and 68A of the Criminal Procedure Code, which allow judges to grant permission to testify under special circumstances.

4. The Role of LPSK in Implementing Protection

The Witness and Victim Protection Agency (LPSK) is an independent state institution tasked with providing protection to witnesses and victims. Established under Law Number 31 of 2014, the LPSK has several key functions within the Indonesian criminal justice system.

First, the LPSK is tasked with verifying and assessing protection requests from witnesses and victims to determine whether they meet the criteria for protection. This is crucial to ensuring that protection is provided to those who truly need it and meet the requirements stipulated by law.

Second, the LPSK provides protection in the forms described above, including physical, psychological, and socioeconomic protection. In carrying out this function, the LPSK coordinates with various related institutions, such as the police, prosecutors, courts, hospitals, and other social institutions, to ensure comprehensive and effective protection.

Third, LPSK has the authority to submit recommendations to the authorities regarding the protection required by witnesses and victims, including

recommendations to change trials to closed venues or allow testimony through information technology media to avoid direct contact with the accused.

Fourth, the LPSK is also tasked with documenting, monitoring, and reporting on the protection efforts that have been implemented, so that their effectiveness and any obstacles encountered in implementation can be identified. These reports are crucial for evaluating policies and improving the protection system going forward.

5. Obstacles in the Implementation of Witness and Victim Protection Structural and Institutional Barriers

One of the main obstacles to implementing witness and victim protection is the LPSK's limited resources. As a relatively young and developing institution, the LPSK faces challenges in terms of operational budget, trained human resources, and adequate infrastructure. These limitations prevent the LPSK from providing optimal protection to all witnesses and victims in need, particularly in areas without LPSK branch offices.

Furthermore, coordination between the LPSK (Lembaga Penita Masyarakat Indonesia) and other institutions involved in the criminal justice system remains suboptimal. The police, prosecutors, and courts sometimes have differing perspectives on the priorities and methods for implementing witness and victim protection, creating obstacles to implementation. The lack of a clear and effective coordination mechanism results in overlapping or even a lack of responsibility in providing protection.

6. Procedural and Technical Obstacles

The process for applying for protection from the LPSK (Lembaga Masyarakat Pemberantasan Korupsi) remains relatively complex and time-consuming. Witnesses and victims must submit a written request, which is then verified by the LPSK, a process that often takes days or even weeks. Meanwhile, the safety of witnesses and victims remains at risk, and they are not receiving the protection they need promptly.

Furthermore, not all police, prosecutors, and courts have the facilities to support the implementation of the protection offered by the LPSK. For example, not all courtrooms are equipped with technology to allow for remote testimony or face masks. This makes some forms of protection ineffective in practice.

7. Cultural and Social Barriers

In some communities, particularly in remote areas or those with strong social structures, there is a culture of silence or resolving issues internally without involving the authorities. This culture creates barriers for witnesses and victims to trust and utilize the protection offered by the LPSK (Lembaga Penida Indonesia) and other law enforcement agencies. Furthermore, the social stigma attached to witnesses and victims in some communities makes them reluctant to report and seek protection.

Economic factors also pose a significant barrier. Living expenses during the trial, transportation costs, and loss of income due to having to leave work to attend trials create a significant financial burden for many witnesses and victims. Although the LPSK (Lembaga Penitaan Masyarakat) provides socio-economic benefits, the amounts are often insufficient to cover all costs.

DISCUSSION

1. Analysis of the Effectiveness of Legal Protection for Witnesses and Victims

Analysis Framework

To analyze the effectiveness of witness and victim protection, it is necessary to develop an analytical framework that integrates various perspectives. Justice theory emphasizes that the justice system must be fair to all parties involved, including witnesses and victims. In this context, witness and victim protection can be seen as integral to achieving true justice, because without adequate protection, witnesses and victims cannot access justice in a meaningful manner and free from intimidation.

Evidence theory also provides an important perspective. Proof in the criminal justice system depends on the quality and credibility of evidence, including witness testimony. If witnesses are not adequately protected, the quality of their testimony can be compromised due to fear or trauma. Therefore, the effectiveness of witness protection directly impacts the effectiveness of evidence in the judicial process.

a. Effectiveness Indicators

Several indicators that can be used to measure the effectiveness of witness and victim protection include:

- **Number of Protection Applications and Acceptance:** If the number of protection applications is high but the acceptance rate is low, this indicates a gap between the need for protection and the capacity of the LPSK. Conversely, if many witnesses and victims are unaware of or do not submit applications, this indicates a problem with outreach.

- Witness and Victim Satisfaction: Effective protection should reduce fear, increase feelings of security, and facilitate active participation in the judicial process.
- Level of Intimidation and Threats: If the level of intimidation remains high despite the provision of protection, then the effectiveness of the protection still needs to be improved.
- Quality of Witness Testimony: Witnesses who feel well protected tend to provide clearer, more detailed, and more credible testimony.

b. Empirical Analysis

Based on available data from the LPSK's annual reports and various academic studies, it can be seen that the number of requests for protection from the LPSK has increased significantly year after year. This indicates that more witnesses and victims are aware of the LPSK's existence and the benefits it offers. However, this increase in requests has not always been accompanied by a proportional increase in the level of acceptance or the quality of protection provided.

Qualitative studies involving interviews with witnesses and victims indicate that while physical protection is often adequate, psychological protection and social support still require improvement. Many witnesses and victims reported feeling alone and inadequately supported during the judicial process, despite receiving protection from the LPSK.

Furthermore, variations in protection effectiveness are also evident across regions. In large cities like Jakarta, Surabaya, and Medan, protection effectiveness is relatively better due to better infrastructure, better trained human resources, and better inter-agency coordination. However, in remote areas or areas with high levels of violence, protection effectiveness lags significantly behind.

2. Efforts to Optimize Witness and Victim Protection Harmonization of Legislation

The first step in optimizing witness and victim protection is to harmonize and synchronize the various relevant laws and regulations. Currently, witness and victim protection is regulated by various legal instruments, such as the Criminal Procedure Code (KUHP), Law Number 31 of 2014, and various other technical regulations. However, conflicting or inconsistent norms are often found among these regulations,

necessitating a review and update to ensure consistency and clarity of applicable legal norms. (Sitepu, 2023).

3. Capacity and Resource Building

The second effort is to increase the capacity of the LPSK (Lembaga Penitansi Masyarakat, Witness, and Victim Protection Agency) and other institutions involved in witness and victim protection. This includes increasing operational budgets, improving human resource recruitment and training, and developing supporting infrastructure. Specifically, the LPSK needs to open branch offices in various regions, particularly those currently lacking access to LPSK services, to reduce geographic barriers for witnesses and victims in accessing protection.

4. Strengthening Inter-Agency Coordination

The third effort is to strengthen coordination and cooperation between the LPSK (Lembaga Penitansi Masyarakat, LPSK) and the police, prosecutors, courts, and other institutions involved in the criminal justice system. One coordination mechanism that could be developed is the establishment of a witness and victim protection task force at the central, provincial, and district/city levels, consisting of representatives from various institutions to identify problems and seek joint solutions.

5. Increasing Public Awareness and Education

The fourth effort is to raise public awareness and educate the public about the rights of witnesses and victims, as well as the types of protection available from the LPSK. This education can be conducted through various channels, such as public campaigns, outreach in schools and universities, and through mass media and social media. In particular, the police and prosecutors also need to provide information to victims and witnesses during their initial court appearances.

6. Technology Development and Innovation

The fifth effort is the development of technology and innovation in implementing witness and victim protection. Technologies such as video conferencing, face masking, and other security technologies can be used to facilitate safe and secure testimony (Harjono, 2023). Furthermore, the development of an integrated case management system across various institutions will facilitate tracking and monitoring of the protection status provided to witnesses and victims.

CONCLUSION

Based on an in-depth analysis of legislation, scientific literature, and field implementation practices, several important conclusions can be drawn:

- Protection of witnesses and victims in the Indonesian criminal justice system is regulated by various comprehensive legal instruments, particularly Law Number 31 of 2014 concerning Witness and Victim Protection. These protections include physical, psychological, and socioeconomic protection designed to ensure the safety, well-being, and fundamental rights of witnesses and victims during the judicial process.
- The establishment of the Witness and Victim Protection Agency (LPSK) is a concrete and positive step towards realizing a more humane justice system. The LPSK has the mandate and authority to verify, provide protection, and monitor the protection provided to witnesses and victims.
- Although the existing legal framework is quite adequate, its implementation still faces various significant obstacles, including structural, procedural, as well as cultural and social barriers, all of which contribute to the lack of effective witness and victim protection in the field.
- Analysis of protection effectiveness shows that despite an increase in the number of applications and receipts for protection, the quality and coverage of protection still vary significantly across regions. Physical protection is relatively well implemented, while psychological protection and social support still require improvement.
- Optimization efforts require a comprehensive approach that includes regulatory harmonization, increasing LPSK capacity, strengthening inter-agency coordination, increasing public awareness, and developing technology.
- From a theoretical perspective, witness and victim protection is a manifestation of progressive legal protection theory, the concept of justice as fairness, and the recognition of the importance of quality evidence in the theory of proof. Thus, witness and victim protection is not only a legal imperative, but also a moral and practical imperative for achieving a just, effective, and responsive justice system.

Protection of witnesses and victims is a crucial component of realizing a fair and human rights-oriented criminal justice system. The presence of witnesses and

victims is crucial to the success of the evidentiary process in court. Therefore, the state is obliged to provide effective protection so they can testify without fear.

This protection encompasses not only physical aspects but also psychological, social, and economic ones. In practice, the implementation of protection still faces various challenges, such as limited resources, poor coordination between institutions, and a culture that does not fully support victim protection.

Strengthening witness and victim protection requires collaboration between the government, law enforcement officials, the community, and social institutions. Furthermore, the use of information technology and reform of the criminal justice system are also crucial steps in increasing the effectiveness of protection.

With optimal protection, it is hoped that witnesses and victims will receive a sense of security, justice, and proper reparation. This will ultimately strengthen public trust in Indonesia's criminal justice system.

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