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Normative ideas legal protection to witness and victim in criminal case

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ABSTRACT

Legal protection of witnesses and victims in criminal cases is an important aspect of the Indonesian criminal justice system. This is due to the crucial role of witnesses and victims in assisting law enforcement and achieving justice for victims. However, legal protection for witnesses and victims in Indonesia still has weaknesses, with many cases remaining undisclosed due to a lack of adequate evidence. This study aims to analyze normative ideas regarding legal protection for witnesses and victims in criminal cases. The research method used is the normative juridical method. The data collection technique in this study involves a literature study. The data analysis used in normative law research is qualitative analysis. The results of the study show that normative ideas are needed to strengthen legal protection for witnesses and victims in criminal cases. These ideas include strengthening the legal foundation through expanding the scope of protection, strengthening protection institutions, increasing public awareness, reforming the criminal justice system that focuses on developing a victim-centered justice system, and the use of technology in legal protection for witnesses and victims. Through the strengthening of legal protection, it is hoped that witnesses can give important testimony without fear, which ultimately supports the creation of a fair legal system and provides effective legal protection for all Indonesian citizens.

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INTRODUCTION

Susno Duadji, the former head of the Indonesian Police Criminal Investigation Agency, is known as a controversial figure who popularized the term "lizard versus crocodile" in the conflict between the KPK and the National Police Headquarters in July 2009. He is in the public spotlight as a whistleblower who dares to expose the scandal of case brokers at the National Police Headquarters, including the Century Bank Bail Out case and the tax mafia Gayus Tambunan. However, his courage to expose corruption in his institution led to Susno being removed from his position, detained, and finally sentenced to 3 years and 6 months in prison with a large fine. His case has become a symbol of the helplessness of whistleblowers in Indonesia, considering that several witnesses who helped him died in a mysterious accident, and show the irony behind the ineffective Witness and Victim Protection Law. Although laws and protective instruments for whistleblowers already exist, the reality shows that many continue to face threats and punishments, demonstrating the need for significant improvements in the legal protection system.

People often commit anarchic acts after hearing court decisions that are considered unfair, such as acquitting defendants who are clearly guilty, showing frustration with the legal system. An example of extreme occurred in the late 1800s in New Orleans, United States, after the assassination of Police Chief David Hennesy. After the jury acquitted several Italian defendants, an angry mob stormed the prison, killing eleven people, including four unrelated to the case. This case shows the dangers of vigilante and the importance of protection for witnesses and victims. In corruption cases, witnesses often do not dare to tell the truth because of threats and intimidation, even though they hold an important key to uncovering the true perpetrators. Stronger protection for witnesses is urgently needed to ensure justice is upheld and anarchism is avoided.

The birth of a law is based on philosophical, juridical, sociological, and political aspects. The presence of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims is an answer to the concerns of various parties, especially the justice-seeking community and law enforcement officials such as police, prosecutors, judges, and lawyers. The view of law as a system is a fairly old view, although the meaning of the system in various theories that hold such a view is not always clear and uniform. From a philosophical basis, the regulations that were formed considered the outlook on life, consciousness, and legal ideals which included the spiritual atmosphere and philosophy of the Indonesian nation which was sourced from Pancasila and the Preamble to the 1945 Constitution. The Preamble to the 1945 Constitution states the government's obligation to protect the entire Indonesian nation from arbitrary acts, which is reflected in the Criminal Code (KUHP) to protect against abuse of authority by state apparatus.

From a juridical basis, everything that has legal meaning is recognized as legitimate by the government, with standard rules and binding on everyone in the jurisdiction (Gorobets, 2020; Harel & Shinar, 2023; Linderfalk, 2020; Ramadhan & Rafiqi, 2021; Turmo, 2021). There are constitutional guarantees in the Preamble to the 1945 Constitution and Article 27 of the 1945 Constitution which states the equality of citizens' positions in law and government without exception. The sociological foundation includes regulations that are formed to meet the needs of society, with empirical facts regarding the development of problems and the needs of society and the state. This includes the community's demands for justice, guaranteed protection from threats, the courage to reveal facts, and adequate institutions. From a political basis, there is political will from the government and pressure from community organizations that are concerned about biased law enforcement. The influence of politics on the law is so strong that the product of the political agreement is not spared from various shortcomings (Andrias & Sachs, 2021; Art et al., 2023; Kirchheimer, 2015; Walters, 2022; Wenzelburger, 2020). The government must make provisions that regulate the equality of legal status of every citizen, as stipulated in the Criminal Code.

The reason for the current research is because of the many weaknesses in the Witness and Victim Protection Institute (LPSK), which attracted the author's attention to make it a dissertation topic. LPSK should dare to provide protection according to its provisions, but now whistleblowers are often entangled in defamation and LPSK is just silent, even though it has been protected by the law and mutual agreements of various legal institutions. Crime is an age-old phenomenon that has been the subject of many international conferences, including the United Nations Congress. However, the protection of witnesses and victims is often overlooked, even though witnesses are a key element in the criminal justice process. Many cases are not revealed because witnesses are reluctant to provide information for fear or threats, showing the importance of fair enforcement of the Criminal Procedure Law for all parties.

Legal protection for witnesses is regulated in Law No. 26 of 2000 concerning Human Rights Courts and Government Regulation No. 2 of 2002, but this does not cover all crimes. In June 2005, the Witness and Victim Protection Bill was introduced and passed in July 2006. Legal protection of witnesses is very important because witnesses often face risks to the safety of themselves, their families, and property. Criminal Law aims to protect people, property, society, and the state. However, the difficulty in resolving criminal cases is often caused by the lack of witness protection mechanisms, especially in cases of corruption and organized crime. Strong legal protection is needed so that witnesses can give evidence without fear. Legal reforms must continue to be carried out to ensure the protection of witnesses and victims, and a fair and transparent judicial process.

Literature research shows that law enforcement and the Witness and Victim Protection Agency (LPSK) have not dared to protect witnesses and victims in criminal trials. Previous research revealed that although witnesses have an important and strategic role in criminal justice, witness protection policies are still inadequate (Cusack, 2020; Hope et al., 2022; Makanje, 2020; Verma & Krishnakumar, 2021; Wells et al., 2020). Law No. 13 of 2006 on the Protection of Witnesses and Victims has not been able to provide proper protection, causing witnesses and victims to often feel threatened and reluctant to testify. Several studies also highlight that the protection of witnesses and victims in Indonesia needs to be strengthened so that the criminal justice process can run more effectively and fairly.

This research aims to evaluate the implementation of witness and victim protection in criminal cases and develop normative ideas for better legal protection in the future. Researchers also want to identify weaknesses in current legal protection and find obstacles in criminal law enforcement that can hinder justice for witnesses and victims. This research is expected to make a theoretical contribution to the application of legal protection for witnesses and victims, as well as practical benefits for the government and the wider community in ensuring that witnesses, especially in corruption cases involving government officials, are protected by the LPSK and do not become victims of injustice.

METHOD

This type of research for the dissertation is normative juridical research that focuses on the application of rules or norms in positive law. This study examines the role of normative ideas in the protection of

witnesses and victims in criminal cases, especially in legislative, executive, and judicial institutions. The analysis method used is qualitative, which provides a description of the findings without using numbers. The approaches used include a legal approach, a comparative legal approach, and a conceptual approach to prepare arguments that are appropriate and relevant to the legal issues at hand.

This study collects primary data through field surveys related to the certainty of legal protection for witnesses and victims, as well as secondary data from literature and legal sources. Data collection techniques include literature studies and guided free interviews. The data obtained were processed by classification and analyzed interpretively with a statutory approach. The location of the research was carried out at the office of the Witness and Victim Protection Institute (LPSK), the National Library of the Republic of Indonesia, and the South Jakarta Regional Police Office (Polda), because of the relevance of the location to the research topic.

RESULTS AND DISCUSSION

The State of Indonesia has committed to ensuring justice for all its citizens through a fair law enforcement system, which includes stages of investigation, investigation, prosecution, and trial. The main purpose of this process is to punish individuals who are proven guilty based on the evidence gathered to reveal material truths. In court, relevant evidence, including witness and victim statements, is presented to form the confidence of the panel of judges in deciding the guilt of the defendant. Witness statements are very important in providing a clear picture of the events of the crime and identifying the perpetrators.

According to Article 1 point (1) of Law of the Republic of Indonesia Number 31 of 2014, a witness is a person who can provide information for the purposes of investigation, investigation, prosecution, and examination in court about a criminal act that he hears, sees, and/or experiences himself. A victim is someone who has suffered losses as a result of a crime and/or has experienced a direct disturbance of a sense of justice. Without the presence of witnesses, the evidentiary process in the trial can be hampered, so information from the public is often the key in uncovering cases of law violations. However, witnesses and victims often face difficult situations such as threats, violence, and intimidation, which reduces their courage to testify.

Legal protection for witnesses and victims is very important to ensure that the truth can be revealed in criminal law enforcement. Law Number 31 of 2014 concerning the Protection of Witnesses and Victims is the main legal basis for their protection, regulating the rights and necessary protection mechanisms. This law is based on the protection of respect for dignity and dignity, a sense of security, justice, non-discrimination, and legal certainty. The Witness and Victim Protection Institute (LPSK) is responsible for providing protection and support to witnesses and victims, creating a sense of security so that they can testify smoothly in court and ensure that the trial process runs effectively.

LPSK is tasked with providing physical, psychological, and legal protection to witnesses and victims. However, even though the LPSK institution exists to protect, in reality the legal protection system for witnesses and victims in Indonesia still faces several weaknesses, as identified below.

1) Witness and victim protection coverage is still limited: Legal protection for witnesses and victims in Indonesia is still limited because the Witness and Victim Protection Law only applies to certain criminal cases, such as corruption, narcotics, terrorism, and very dangerous crimes. The criteria for threats to the lives of witnesses and victims are not clear, so protection is not comprehensive for all types of crimes. This results in the system's inability to fully protect witnesses and victims in various criminal cases, even though the impact of the losses is similar. In addition, there is no specific law governing protection for whistleblowers, whistleblowers, and justice collaborators, so these groups do not have adequate legal protections and are vulnerable to threats or retaliation for the information they provide, resulting in deficiencies in the protection systems that are supposed to support law enforcement and crime disclosure.
2) Less Effective Protection Mechanism: Although LPSK is tasked with protecting witnesses and victims, the current protection mechanism is considered ineffective. One of the weaknesses is that the witness and victim protection law has not clearly regulated the authority of LPSK in providing protection to witnesses and victims. This sometimes causes LPSK to make mistakes in carrying out its duties (Komariah, 2015). In addition, the physical and psychological protection provided by LPSK has not fully guaranteed safety for witnesses and victims. The legal assistance process that is supposed to help witnesses and victims in facing the judicial process is also still not optimal. On the other hand, the mechanism to provide compensation and restitution to witnesses and victims is also inadequate, so it does not fully provide a sense of justice and redress for those affected.
3) Limited Capacity of Protection Institutions: LPSK faces major obstacles in protecting witnesses and victims, especially related to funding and human resources (HR). Although the budget for LPSK has increased, the number of complaints received has also increased, so with a limited

budget, LPSK has been forced to reduce the number of witnesses and victims that can be protected and limit the time for protection to be provided, hampering the ability to provide adequate and sustainable protection. In addition, LPSK is experiencing a shortage of supportive human resources, where the number of employees is insufficient to handle the large number of complaints that come in. In order to be able to respond effectively to the needs of the community who are witnesses and victims, LPSK needs more employees, ideally with a ratio of at least two employees for each district or city, but the limited number of employees makes it difficult for LPSK to provide adequate protection and respond to all incoming complaints.

4) Lack of Public Awareness: Law enforcement efforts require the active participation of the public, including victims, the media, NGOs, and whistleblowers, who provide testimony and information to uncover cases. Crime is increasingly complex in modus operandi and motivation, often linked to political or ideological goals. In addition, the culture of hedonism that values property is increasingly institutionalized in Indonesia, so community participation as witnesses is very necessary. However, the public has not fully understood the rights and protection mechanisms available to them as witnesses. There is stigma and discrimination against witnesses and victims, fear of retaliation, and inadequate protection. Witnesses often experience rough treatment from investigators, intimidation in court, and fear of being blamed for false testimony, which leads to a reluctance to testify.
5) Culture of Intimidation and Threats: A culture of intimidation and threats is often experienced by witnesses and victims in Indonesia, making them afraid to testify. Perpetrators or other parties often intimidate witnesses not to report, and in many cases, the threats actually happen. Witnesses are often worried about changing their status to suspects because of their involvement in the case, especially if they are also involved in criminal acts. This fear causes many witnesses to be reluctant to participate in the legal process, creating ethical and practical dilemmas that hinder truth disclosure and effective law enforcement efforts.
6) Weak Law Enforcement: Weak law enforcement is still a significant problem in Indonesia, especially when it comes to witness and victim protection. Many cases of intimidation and threats against witnesses and victims are not processed legally. This shows that there are still deficiencies in the legal system's response to violations committed against witnesses and victims (Yanto et al., 2023). In addition, law enforcement officials have not shown a strong commitment to protecting witnesses and victims. The protection provided is often inadequate, and preventive measures to prevent intimidation or threats are often ineffective. This lack of commitment creates an environment where witnesses and victims feel insecure and hesitant to report or testify, ultimately hindering the law enforcement process and the search for justice.

Addressing weaknesses in witness and victim protection requires urgent changes to strengthen law enforcement and justice. One of the normative ideas is to expand the legal basis by adding protections for justice collaborators and whistleblowers, as well as expanding the rights of witnesses and victims. This is important so that LPSK can provide adequate guarantees and encourage more active involvement in the disclosure of criminal acts. In addition, the revision of the Law on the Protection of Witnesses and Victims (UU PSK) is needed to improve regulations related to physical and psychological security, legal assistance, and restitution and compensation mechanisms. These changes aim to ensure more effective and comprehensive protection for witnesses and victims.

To improve the protection of witnesses and victims, normative ideas include strengthening protection institutions such as LPSK through increased funding, human resources, infrastructure, and technology. With this increase, LPSK will be able to carry out its duties more effectively. It is also important to establish a national protection network involving various stakeholders, including governments, non-governmental agencies, and NGOs, to ensure the necessary support for witnesses, especially in high-threat situations. This collaboration is important to maintain the safety of witnesses during the protection process, and support from the President and better coordination between LPSK and related institutions are needed to address existing issues and increase the effectiveness of protection.

The next point is to increase public awareness is also an important step in strengthening the protection of witnesses and victims. The main way to achieve this is through extensive legal socialization and education. This method can involve the use of various media and involve various parties to disseminate information. Given that the understanding of LPSK and Law Number 13 of 2006 concerning the Protection of Witnesses and Victims is still limited among the general public and law enforcement, socialization needs to be a top priority in the LPSK work program (Sunarso, 2022). If the public better understands the rights and protection mechanisms that exist, people will be more confident in reporting information and giving testimony without fear of threats or intimidation. As a result, it will make the law enforcement and criminal justice process

easier, making it more effective. In addition, increasing public awareness also contributes to the development of a culture that respects witnesses and victims, as well as encourages tolerance and reduces discrimination.

Normative ideas for witness and victim protection include reforming the criminal justice system with a focus on victims, not just perpetrators. During this time, attention has often been focused on the rights of perpetrators, while the needs of witnesses and victims are often ignored. To overcome this, the justice system needs to implement restorative justice that involves mediation and reconciliation between perpetrators and victims and involves the community in the case resolution process. In addition, LPSK must be more active not only in protecting witnesses and victims physically and psychologically, but also in assisting in the restoration of victims' rights, including the return of property lost due to crime, by cooperating with law enforcement officials and making agreements regarding the recovery mechanism.

Furthermore, the last point, in the future the use of technology in legal protection for witnesses and victims has great potential to increase the effectiveness of this protection effort. Today, technology has penetrated into all aspects of human life, so its use can be applied in criminal law. For example, technologies such as blockchain can provide transparent and immutable records of evidence and legal process, thereby reducing the risk of data manipulation. Surveillance technologies such as CCTV cameras and drones can help monitor criminal activity and provide strong evidence in legal proceedings (Joh, 2018; Slobogin & Brayne, 2023). So, this technology can also protect witnesses and victims from threats or crimes that endanger them. However, there are challenges in the implementation of this technology, such as lack of infrastructure, limited funding, and resistance from law enforcement officials to change. Therefore, significant investments in technology and training are required to ensure effective and efficient adoption. Increased transparency and accountability through technology can be key in improving the law enforcement system in Indonesia (Haspada, 2023).

In the criminal justice system in Indonesia, justice is greatly influenced by the protection provided by LPSK to witnesses. The following are the impacts that can be seen from this protection (Djamaludin & Arrasyid, 2024):

1) Witness courage: Protection from LPSK provides a sense of security and trust for witnesses to give their testimony without worrying about threats or repression from the parties involved in the case. Thus, this protection can encourage witnesses to be more courageous and cooperative in providing evidence that is important for the judicial process.
2) Reliability of evidence: The protection of witnesses makes witness testimony more reliable and strong in the judicial process. Protection helps reduce pressure and threats that can affect witness testimony, thereby increasing the credibility and reliability of evidence presented in court.
3) Legal guarantees: In the criminal law system, legal guarantees are an important principle. Witness protection helps ensure legal certainty by ensuring that witnesses can testify without fear or intimidation. As a result, the judicial process can run fairly and objectively, without discrimination or unauthorized intervention.
4) Disclosure of the truth: The protection of witnesses also has an impact on the disclosure of the truth in a case. When witnesses feel safe and protected, they tend to be more cooperative in presenting relevant facts that are important to uncovering the truth. This contributes to the search for truth and fair enforcement of the law.

So that the positive impact of witness protection shows that providing protection is a key element in ensuring that witnesses can give important testimony without fear. Witness protection ultimately supports a fair and objective judicial process. Given the importance of witness and victim protection, reforms must be carried out to overcome the weaknesses that exist in the witness protection system so far. The goal is to create a fair legal system and provide effective legal protection for all Indonesian citizens. All of this will contribute to better justice and strengthen public trust in the criminal justice system in Indonesia.

CONCLUSION

The Law on the Protection of Witnesses and Victims (LPSK) in Indonesia significantly influences the criminal justice system. However, the system still has several weaknesses, highlighting the importance of witness and victim protection in criminal law enforcement. Future research should analyze these weaknesses, identify areas in need of reform, and explore the effectiveness of existing legal frameworks and policies. Evidence-based recommendations should be proposed to enhance protection mechanisms. Comparative studies with other jurisdictions could provide insights into best practices and potential models for reforming Indonesia's witness protection system. This review emphasizes the need for reforms to improve the protection of witnesses and victims in Indonesia's criminal justice system.

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