

The Position of The Witness and Victim Protection Agency (Lpsk) in The Indonesian Criminal Justice System

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Abstract

The purpose of this research is to find out the Position of the Witness and Victim Protection Agency (LPSK) in the Criminal Justice System in Indonesia, using the *Library Research* method, which is a method used by studying literature books, legislation, and other written materials related to the discussion material that the author uses to write this paper. The Witness and Victim Protection Agency aims to protect and provide a sense of security from all forms of threats, fear from the perpetrators of criminal acts that can affect the truth in criminal law enforcement. In conclusion, *the* position of LPSK in the criminal justice system plays an important role in establishing comprehensive protection for witnesses and victims. By providing physical protection, legal aid, psychological support, escort and assistance. LPSK supports the courage and involvement of individuals in the judicial process. This authority is a concrete step in realizing a justice system that is more just, humane, and respects individual rights.

I. Introduction

The legal basis for the protection of witnesses and victims is the constitution or the 1945 Constitution of the Republic of Indonesia, which reads:

1. The State of Indonesia is a Unitary State in the form of a Republic
2. Sovereignty is vested in the people and exercised according to the Constitution
3. Indonesia is a state of law

Based on the provisions of Article 1 of the 1945 Constitution illustrates that the running of the government in Indonesia refers to serving the public interest of every citizen. The government's public service is based on the principle of the rule of law, so it must guarantee legal certainty, equality of citizens before the law and continue to uphold the principles of democracy. Protection of witnesses and victims by state institutions (LPSK) is a manifestation and principle of the rule of law that guarantees legal certainty.

Protection must be implemented properly not only for victims and witnesses, but more broadly, namely the community, nation and state. As the purpose of the state enshrined in the 1945 Constitution of the Republic of Indonesia, which is to protect the entire Indonesian nation and the entire spilled blood of Indonesia, ... in turn, a more fundamental goal will be achieved not only justice, legal certainty and order but more than that, namely a Welfare State (Waluyo, 2011).

The importance of witness and victim protection is motivated by the perspective of a shift from retributive justice to restorative justice. This shift has brought a new perspective to criminal law and the criminal justice system, as follows:

1. Justice in criminal law is oriented towards the interests or suffering of victims and the responsibility of offenders for their actions and the consequences for victims (Mudzakir, 2005).
2. Crimes or violations of the criminal law are violations of the public interest and the interests of victims are the first and foremost part of the public interest.
3. The victim is the person harmed by the crime, first and foremost the victim, the community, the state and indeed the offender himself.
4. The administration of criminal justice serves as a means of conflict resolution.
5. The punishment and type of punishment to be imposed on the perpetrator is part of conflict resolution by emphasizing the perpetrator's responsibility for the act and its consequences.
6. Victims, communities, the state and offenders in the criminal justice process are active.

The relationship between victims and individuals can be structural. It is important to understand the rights and obligations of victims:

1. Victims' rights, among others:
 - a. is entitled to compensation for his/her suffering according to the ability of the compensator and the degree of involvement, participation or role of the victim in the occurrence of the crime and irregularities (Gosita, 1993).
 - b. have the right to refuse compensation to their heirs if the victim dies as a result of the act.
 - c. have the right to receive guidance and rehabilitation
 - d. have the right to recover their property rights

- e. has the right to refuse to be a witness if this would endanger him or her.
- f. have the right to protection from threats from the victimizer if they report and become a witness.
- g. Entitled to the assistance of legal counsel.
- h. the right to use legal remedies.

The victim's obligations include:

- a. No retaliation or vigilantism.
- b. Participate with the community to prevent the creation of more victims
- c. Preventing the destruction of the victim's actions either by oneself or others
- d. Participate in fostering victim makers
- e. Willing to be coached or foster themselves not to be victimized again
- f. Not demanding compensation that is incompatible with the victim-maker's capacity
- g. Provide an opportunity for the victimizer to compensate the victim according to his/her ability.
- h. Being a witness bile does not endanger yourself and there is no guarantee.

In terms of the level of threat that harms witnesses and victims, it can be measured from the source of the criminal offense and the consequences of the crime itself. The quality of organized crime, in general, has a network involving insiders whose disclosure of crime has its own techniques and tactics such as in extraordinary crimes, namely corruption, narcotics, terrorism, money laundering. Violent crimes that cause victims need attention to be protected. The measure is not only seen in terms of physical appearance, but the impact of these crimes that cause psychological impacts, such as traumatic feelings from victims. Therefore, medical and psychological attention is needed to fulfill the right to protection.

The purpose of legal protection for witnesses and victims according to Law. No. 13 of 2006 on Witness and Victim Protection is necessary in providing testimony in every criminal justice process.

As a state of law, government administration in the field of law must be based on legal justice which is synergistic with other legal objectives, namely ensuring legal certainty (Soekamto, 1988). Every citizen receives legal protection and has the same position before the law without any exceptions. The state is required to have adequate institutional capacity, management and human resources, facilities and infrastructure to carry out efforts and activities to provide protection assistance to whistleblowers, witnesses and / or victims of criminal acts reported to LPSK.

The development of institutional and technical operational capacity for witness and victim protection requires *political will* from the government and every state organizer to make a positive contribution to the development of witness and victim protection. One of the valid evidence in the criminal justice process is witness testimony, namely the testimony of a person who hears, sees or experiences the criminal offense that occurred. Therefore, the role of a reporter, witness or victim is very important in the context of disclosing criminal cases that occur (Soekamto, 1988).

One of the weaknesses that becomes an obstacle for the Witness and Victim Protection Agency is related to the duties and authority of the LPSK which handles the provision of protection and assistance to witnesses and victims based on the duties and authorities as regulated. However, the duties and authorities of LPSK are not formulated as an institution responsible for handling the provision of protection and assistance to witnesses and victims, so that LPSK will experience obstacles (Takakariawan, 2016).

2. Research Method

The research method used is normative juridical research method where legal research is carried out by examining as a basic material to be researched by conducting searches related to the problem under study (Peter, 2005). This research was conducted by collecting library materials related to the case of the Witness and Victim Protection Agency (Soekamto, 1981). The research conducted by the author includes research on 3 (three) types of legal materials, namely primary, secondary, and tertiary legal materials, the explanation is as follows:

1. Primary Legal Materials

It is a binding legal material sourced from laws and regulations.

2. Secondary Legal Materials

Materials that provide explanations of primary legal materials, especially written works related to the subject matter.

3. Tertiary Legal Materials

Tertiary legal materials, namely materials that provide guidance and explanations to Primary and secondary legal materials, such as the Big Indonesian Dictionary (KBBI).

3. Results and Discussion

Law No. 31/2014 on the Amendment to Law No. 13/2006 in Article 11 paragraph (1) states that LPSK is an independent institution directly responsible to the President. This means that LPSK is an independent institution (usually called an independent commission), namely state organs that are ideally independent and therefore outside the Executive, Legislative and Judicial branches of power, but have mixed functions between the three branches of power.

The structure of LPSK is under any government agency (executive) or other state institution. LPSK members consist of people from the National Human Rights Commission, the police, the prosecutor's office, the Law and Human Rights Department, academics, advocates or non-governmental organizations. The existence of LPSK has an important role in law enforcement. LPSK is an institution that is tasked and authorized to provide protection and other rights to witnesses and or victims as stipulated in the law.

The duties and authorities of LPSK contained in Law no.13 of 2006, namely:

- a. Receive requests from witnesses and or victims for protection (Law of the Republic of Indonesia No. 13/2006)

- b. Make a decision on the provision of witness and or victim protection
- c. Provide protection to witnesses and/or victims
- d. Discontinuing the witness and/or victim protection program
- e. Submitting to the Court (based on the wishes of the victim) the right to compensation in serious human rights violations and the right to restitution or compensation for losses that are the responsibility of the perpetrator of the criminal offense.
- f. Receive a written request from the victim or the person representing the victim for assistance
- g. Determine the appropriateness of the time period and amount of fees required to provide assistance to witnesses and/or victims.
- h. Cooperate with relevant agencies authorized to provide protection and assistance.

To support the success of the duties and authority of LPSK, community participation is needed to realize a peaceful, safe and prosperous society. Therefore, the activities of the general public, mass media, witnesses and victims are needed to participate in providing testimony according to what they see, hear and feel about the occurrence of criminal acts. In addition, witnesses and victims are obliged to convey information about criminal acts (Sunarso, 2012).

As a form of legal relationship with state power, a state institution was established based on Law No. 18/2006 on LPSK and the vision of LPSK was determined, namely "the realization of witness and victim protection in the criminal justice system."

The vision of LPSK is then built on the mission of LPSK, namely:

1. To realize the protection and fulfillment of the rights of witnesses and victims in criminal justice (Witness and Victim Protection Agency, 2010).
2. Realizing professional institutions in providing protection and fulfilling the rights of witnesses and victims
3. Strengthen the legal basis and capacity to fulfill the rights of witnesses and victims.
4. Establishing and developing networks with stakeholders in order to fulfill the rights of witnesses and victims.
5. Realizing conducive conditions and public participation in witness and victim protection.

Based on this LPSK mission, a number of LPSK functions are established. The definition of this function can be interpreted as a number of jobs or tasks including:

1. Coordinating the function and role of witness and victim protection in criminal justice (Witness and Victim Protection Agency, 2010).
2. Receive requests, submissions from or applications for protection of witnesses and or victims in certain criminal cases.

3. Determine the requirements and forms of protection for witnesses and victims in accordance with the protection undertaken.
4. Coordinating, cooperating and partnering with various parties in witness and victim protection processes and activities.
5. Conduct protection efforts and provide assistance to witnesses and victims in accordance with their authority.
6. Define management systems, information systems and reporting cycles on witness and victim protection activities.

The conditions considered as the basis for granting protection by LPSK are:

1. The importance of witness and/or victim testimony (Bambang, 2011).
2. Level of threat that endangers the witness and/or victim
3. The results of the medical or psychological team's analysis of the witness and/or victim.
4. Track record of crimes committed by the witness and/or victim.

The forms of cooperation carried out by LPSK as an independent institution that protects witnesses and victims are:

1. Cooperation with Law Enforcement: LPSK works closely with the police, prosecutors, and courts to ensure the protection of witnesses and victims in legal proceedings. This includes arrangements for the physical protection and security of witnesses and access to justice.(Muhadar, 2010)
2. Collaboration with Government Agencies: LPSK collaborates with various relevant government agencies, such as the Ministry of Social Affairs to provide psychosocial support and rehabilitation for victims.
3. Cooperation with Non-Governmental Organizations (NGOs): LPSK cooperates with NGOs that focus on human rights protection to achieve witness and victim protection goals. NGOs often have extensive networks and can assist in advocacy.
4. Education and Socialization: LPSK collaborates with educational institutions and community organizations to conduct socialization on the rights of witnesses and victims, and the importance of their protection.
5. Research and Development: LPSK also works with universities and research institutions to develop better policies related to witness and victim protection.
6. Forums and Workshops: LPSK often holds forums or workshops with various parties to discuss issues related to witness and victim protection, share experiences, and find solutions together.
7. International Cooperation: LPSK may cooperate with witness and victim protection agencies from other countries to share experiences and best practices in witness and victim protection.

With these various forms of cooperation, LPSK seeks to provide comprehensive and effective protection to witnesses and victims, and encourage the creation of a safer environment for them.

LPSK implementers need human resources and institutions that are professional and accountable, so that they can provide protection to witnesses and victims in accordance with the objectives in the law. The goal of improving the welfare of society requires the creation of peace in people's lives that is free from all forms of threats from crime.

The mechanism for applying for witness and victim protection and how to obtain witness and victim protection from LPSK is as follows:

1. The request is submitted in writing by the party concerned either on their own initiative or submitted by a person representing them (guardian) or an authorized official to LPSK.(Witness and Victim Protection Agency, 2009)
2. The provision of protection and assistance to witnesses or victims is determined and based on the decision of the LPSK in a plenary meeting of the LPSK.
3. In the event of an LPSK request, the witness and/or victim concerned is obliged to sign a statement of willingness to follow the rules and regulations of witness and victim protection.
4. LPSK protection is provided to witnesses or victims including their families since the signing of the agreement.

One form of protection by the state is the administration of justice. In addition to the completeness of legislation, LPSK, law enforcement, related government agencies, and other relevant parties, the judicial function plays an important role. (Rena, 2010).The function of the court is not only to decide cases, but also to receive reports on the implementation of compensation, or restitution, announce them and order agencies or parties to carry out decisions and so on.(Hamzah, 1990)

Given the urgency of the judiciary, the principles of the administration of justice or judicial power need to be understood. Understanding by victims and/or witnesses is important, at least to know their rights so that they are not violated or ignored. The awareness of victims and/or witnesses of their rights can support a clean and authoritative judiciary to administer justice to uphold law and justice (Tresna, 1994).

Referring to Law No. 48/2009 on Judicial Power, we find the formulation of the principles of the exercise of judicial power (Article 2 to Article 17). The first principle is that the judiciary is carried out for the sake of justice based on God Almighty. The elucidation of Article 2(1) of Law No. 48/2009 essentially states that this principle is in accordance with Article 29 of the 1945 Constitution of the Republic of Indonesia. Actually, this principle is

sacred and has a very high position, because it mentions the name of God. For judges in particular, in examining and deciding cases, they must base justice and truth above all else and for the sake of God is the foundation and purpose of justice. So it is not for the sake of someone, the ruler, as well as personal or group interests, and others.

The next principle, among others, is that justice is done simply, quickly and at low cost. Any interference in judicial affairs by other parties outside the judicial power is prohibited, except in matters as referred to in the 1945 Constitution of the Republic of Indonesia. Therefore, any person who willfully violates the law shall be punished in accordance with the provisions of the legislation. Here, the court adjudicates according to the law without discriminating against people. The court also assists justice seekers and tries to overcome all obstacles and hindrances in order to achieve simple, fast, and low cost justice.

Judges are required to explore, follow, and understand the legal values and sense of justice that live in society. In addition, judges must have integrity and an irreproachable personality, be honest, fair, professional, and experienced in the field of law. Furthermore, judges are obliged to obey the code of ethics and judges' code of conduct.

It is also emphasized that the court is prohibited from refusing to examine, hear and decide a case submitted on the pretext that the law is absent or unclear, obliging it to examine and try it. In order to be objective, the court examines, tries and decides cases with a panel of at least 3 (three) judges. The court examines, tries and decides criminal cases in the presence of the defendant, unless the law provides otherwise. Ensuring transparency, all court hearings are open to the public, unless the law determines otherwise. Likewise, court decisions are only valid and have the force of law if they are pronounced in a session open to the public. If not, then the verdict is null and void. (Witness and Victim Protection Agency, 2009)

The decision is made based on a confidential deliberation session of the judges. In the deliberation session, each judge is obliged to submit written considerations or opinions on the case being examined and become an integral part of the decision. If a unanimous consensus cannot be reached at the deliberation session, the dissenting opinion of the judges shall be included in the decision. Each party, institution, agency, and law enforcer has its own role and function. Observing the increasingly critical and dynamic society, it is estimated that in the future there will be many claims or demands for the protection of reporters, victims, and/or witnesses. Moreover, LPSK, which is domiciled in the national capital, can have representatives in the regions as needed (Takariawan, 2016).

There are two concepts of justice in criminal law that affect fundamental changes in the

criminal law system, namely retributive justice and restorative justice. These two concepts have a number of differences in viewing formal and material criminal law and the administration of criminal justice (Mudzakir, 2001).

According to the retributive justice perspective, crime is a violation of public order or an act against society, against the collective body of citizens, against a set of standards by the democratic institutions of society (Mudzakir, 2001). Therefore, the administration of justice emphasizes exclusive accountability by the state for prosecution and enforcement. Whereas the restorative justice perspective views crimes, even if they are committed in violation of criminal law, as conflicts between individuals that cause harm to victims, society and the offenders themselves.

Restorative justice is based on the humane relationship between the victim and the offender, and focuses on the impact of crime on all parties, not only the victim but also society and the offender himself. There are four elements that play a role, namely the crime victim, the community, the state and the offender (Susanto, 1995).

Criminal events that occur in the public sphere become elements that are related in terms of many people who see the events that occur. People who see the incident at the scene of the crime are called witnesses. Based on article 1 point 26 of the Criminal Procedure Code, *"A witness is a person who can provide information for the purpose of investigation, prosecution and trial of a criminal case because he sees, hears, or experiences a criminal event himself."* A witness is considered reliable when their testimony is trustworthy and supported by strong evidence. The criteria for becoming a witness must have direct knowledge of the events witnessed, provide honest and accurate testimony and have high integrity and impartiality. (Prakoso, 1984)

According to the Big Indonesian Dictionary (KBBI), a victim is a person who suffers loss as a result of an event or action. This relates to individuals or groups who experience loss, physical injury, or psychological trauma as a result of a criminal act, accident or other criminal offense. The victim is an important tool in a case because the victim is the one who directly suffers losses, including humanitarian losses. The Indonesian state in its constitution also upholds the principle of humanity, therefore victims of victims must get proper services for protection and resolution of problems that occur. According to Muladi, the criminal justice system is a judicial network that uses criminal law as its main tool, both material criminal law and formal criminal law as well as criminal execution (Muladi, 2014).

Witness and victim protection is a very important area because in solving a case witnesses and victims become valid evidence. Victims and witnesses will feel comfortable in providing information or testimony in court. Protection of witnesses and victims is given to witnesses and / or victims at all stages of the criminal justice process in a judicial environment that protects against all threats both physical and / or psychological. The role of LPSK in providing protection in every judicial process, starting at the level of investigation and investigation by the Indonesian Police, the prosecution stage by the Indonesian Attorney General's Office, the examination stage at the Court session by the judge.

Witness and victim protection with objects of protection, including:

- a. Obtain protection for personal security, family and property and be free from threats relating to testimony that will, is or has been given.(Sahetapy, 1987)
- b. Participate in selecting and determining forms of protection and security support
- c. Provide testimony without pressure
- d. Gets the interpreter free from tricky questions
- e. Obtain information on case progress
- f. Obtain information on court decisions
- g. Knowing in the event that the convicted person is released
- h. Gaining a new identity
- i. Getting a new soldier
- j. Obtain reimbursement of transportation costs as needed
- k. Get legal advice

The position of the Witness and Victim Protection Agency (LPSK) is closely related to the law enforcement system. Witnesses and victims of crime are elements of the crime pattern which requires the role of three elements, namely

- (1) elements of the perpetrator of the crime, (Barda, 1996)
- (2) elements of witnesses and victims, and
- (3) elements of legal rules relating to criminal law.

The three elements have an inseparable interrelation. In carrying out law enforcement in line with development goals that will have an impact on changes in the social order of life of the community. In connection with this, some problems that can affect law enforcement will be raised.
rational.

The definition of law enforcement for participants in law enforcement efforts must be clear about the definition of law enforcement. One of the formulations put forward by Arif Gotsita "about the formulation of law is stated, that "the law is a manifestation of the wisdom

of certain authorities, to achieve certain interests, at a certain time, in a certain place" (Gosita, 1993). Based on this formulation, what is meant by the ruler is to categorize whether the ruler prioritizes the interests of himself or his own group or the interests of the people. In relation to national development, what must be prevented is not to let law enforcement only become a target to achieve the interests of oneself or certain groups, which will cause harm and suffering to the people. This phenomenon is called structural victimization. Furthermore, Arif Gosita formulates structural victimization as the creation of victims by existing structural systems, which are used by certain parties for their own or others' interests (Gosita, 1993).

Arif Gosita also formulated the meaning of law enforcement is about how we can keep the law functioning with the perspective of the interests of the people, the political, economic, and social weak groups (Gosita, 1993). Based on this, efforts are needed to convince people that law enforcement efforts are a positive and active effort that requires the full participation of every member of society in accordance with their respective abilities in various fields of life. Guaranteeing protection for participants is a major issue that requires attention. Law enforcement efforts are often in the perspective of the interests of the people, but often in its implementation it is based only on protecting powerful groups or groups which in law enforcement efforts the participant group becomes a person who suffers and becomes a victim of crime (Soekamto, 1981). Victims or those who suffer as members of society are obliged to participate in law enforcement efforts, by providing testimony (Soekamto, 1984).

Arif Gosita went on to say that the victim is essentially a multiple victim (suffering physically, mentally, perhaps also socially, and being a victim of the justice system that is in place and not prosperous). (Gosiita, 1993). In law enforcement efforts, participants act based on laws and regulations with certain restrictions in accordance with their rights and authorities. This certain structural system allows law enforcement efforts to harm certain groups or individuals, which raises the issue of structural victimization, which means being a victim of or creating victims or also being victimized by a certain social structure and its systems (Rahardjo, 1983).

Based on LPSK's year-end note, presented by Rista Magdalena Situmorang, it is said that there was a significant increase in protection requests submitted to the Witness and Victim Protection Agency (LPSK) that continued throughout 2009. LPSK received 74 requests for protection, an increase of 740% from the previous year (Bambang, 2011).

Witness and victim protection is a right which is based on a decision issued by LPSK (Dikdik&Arief &Elisatris2015) The decision made by LPSK concerns the provision of

restitution and compensation rights submitted to the judge through LPSK. Protection of witnesses and victims who feel themselves to be under severe threat with the approval of the judge can provide testimony without being present in person at the Court where the case is being examined. In addition, witnesses and or victims can provide testimony in writing which is submitted before an authorized official and affixes his/her signature to the official report containing the testimony. Similarly, witnesses and or victims can also be heard directly through electronic media and accompanied by an authorized official. (Hamzah, 1990).

In Shapland's view, the lack of status and role of witnesses and victims in the criminal justice system stems from the fact that the criminal justice system is still not satisfactory for witnesses and victims (Shapland, 1985). Other aspects also show that the position of victims in the criminal justice system is still not satisfactory for witnesses and victims.

The Criminal Code is one of the provisions of positive criminal law which is also the parent of positive criminal law regulations in Indonesia, seeing that it has not expressly formulated provisions that directly provide legal protection for witnesses and victims, for example in the case of imposing punishment, it is obligatory to consider the effect of criminal acts on victims or victims' families (Farid & Zainal, 1995). Secondly, the Criminal Code adheres to the neoclassical school, among others, accepting the enactment of mitigating circumstances for the perpetrators of criminal acts concerning physical, environmental and mental conditions.

Indonesian criminal law is currently very controversial and ambivalent. For this reason, stakeholders who play a role in the criminal justice system, both legislative, executive and judicial members must have a progressive spirit to succeed consistently towards empowering the protection of victims of crime, including seeing LPSK as *an essential part of criminal policy and criminal justice system* (Muladi, 2014).

4. Conclusion

One very important aspect in placing LPSK in the criminal justice system is by clearly stating the position of LPSK in the criminal justice system as an institution that has a mandate to protect witnesses and victims and carry out its role in the entire judicial process and with the inclusion of LPSK in the Criminal Code will provide an understanding for other law enforcers about the role of LPSK in the criminal justice system in Indonesia (Sahetapy, 1987).

The position of LPSK in the criminal justice system plays an important role in establishing comprehensive protection for witnesses and victims. By providing physical protection,

legal assistance, psychological support, escort and accompaniment. LPSK supports the courage and involvement of individuals in the justice process. This authority is a concrete step in realizing a justice system that is more just, humane, and honors the rights of individuals as stated in the Law on Witness and Victim Protection which regulates the rights of witnesses and victims.(Rena, 2010)

Based on Law no. 13 of 2006 concerning Witness and Victim Protection, is an obligation of the state as a state reaction to criminal acts to fulfill the rights of witnesses and victims involved in criminal events and also provides state facilities to witnesses and victims by providing compensation, restitution and assistance to witnesses and victims as a result of a criminal act.

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