LEGAL PROTECTION FOR WITNESS UNDER THE WITNESS AND VICTIM PROTECTION LAW

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ABSTRACT

Indonesia’s legal system provides a robust framework for protecting witnesses. In criminal cases, justice and legal certainty are ensured while also prioritizing the safety and well-being of witnesses. This study examines the regulation of legal protection for witnesses and victims under the Witness and Victim Protection Law and assesses if the Law has been effective in providing justice and legal certainty. The research method employed normative legal research. The Criminal Procedure Code (KUHAP) inadequately protects witnesses, as revealed by the study. The Witness and Victim Protection Law clearly outlines the rights of witnesses and victims of criminal acts in specific cases, as determined by the Witness and Victim Protection Agency (LPSK). In addition, the law requires that victims of gross human rights crimes receive compensation from the state. According to Government Regulation No. 44/2008, the state provides compensation when the perpetrators are unable to fully meet their responsibility.

Keywords: Legal Protection, Witness, Victim

1. Introduction

Human life is inseparable from problems, and it serves as an inevitable matter as well. Many problems arise as a result of the behavior of people who want to do something according to their free will but committing some violation on the existing rules or norms in social life. To overcome this, a rule is needed to prevent and punish people who do things that do not conform to the applicable norms or ethics known as law. It has the power to compel people to act according to the general rules governing social life.
The law secures the needs of life so that there is no psychological and physical imbalance in social life if there is always pressure and imprecision in social relations. Law as a norm has specific characteristics, one of which is to protect, regulate and balance in maintaining public interests. Having laws that apply in society, people can carry out all their activities according to the applicable rules in social and community life.

The rules that the law may impose on a person for upsetting the balance of the public interest are the legal rules that are in effect at that time in social life, and not the rules of past laws that are no longer in effect or that are planned for the future. In other words, the applicable rules are positive law that is often referred to as *ius constitutum*, the law in force at a given time and place. In line with its goal of achieving order for the sake of justice, the rules of law will develop following the development of human life.

Since the reform era, Indonesia has adopted and issued several legislative arrangements on the protection for witnesses and victims, including Law No. 20/2000 on Human Rights Courts, Law No. 9/2013 on the Prevention and Eradication of Criminal Acts of Financing Terrorism, and Law No. 23/2004 on the Elimination of Domestic Violence. However, the regulations are still incomplete, and thus, the provisions are not yet comprehensive, and their implementation does not yet meet the expectations.

In addition to government-led law enforcement efforts, particularly those related to high-profile cases, it is essential to acknowledge that there may be a culture among law enforcement officials that could negatively impact the position of witnesses and victims. To promote transparency, it is crucial to provide adequate instruments for protecting witnesses, empowering them, and potentially reevaluating the justice system. To meet these needs, it is also essential to consider providing comprehensive protection and support to witnesses and victims, ensuring that their rights are protected. This may include providing appropriate forms of protection and support.

The Criminal Procedure Code could benefit from further addressing the issue of protecting witnesses and victims. The Indonesian justice system currently offers protection arrangements as specified in Law of the Republic of Indonesia Number 31/2014 on the Amendment to Law No. 13/2006 on the Protection for Witnesses and
Victims, or in relation to efforts to disclose certain criminal offenses, such as gross violation of human rights, domestic violence or corruption. With this law, the legal institution was introduced into the Indonesian system of justice. This study examines the role of protection for witnesses and victims in the Indonesian criminal justice system, with a focus on the need for such protection. It acknowledges the importance of testimony from witnesses and victim-witnesses in revealing the truth and, if necessary, imposing punishment. Therefore, the authors suggest that criminal reaction should only be considered as the last resort (ultimum remedium). The following section presents the challenges that may arise when giving testimony, followed by an examination of the government’s response through legislation aimed at ensuring the disclosure of the material truth. This begins with an analysis of Article 5 of the Witness and Victim Protection Law. The next section discusses the importance of establishing a more rigorous criterion for the Witness and Victim Protection Agency as a starting point to determine when and where protection for witnesses and victims should be provided. Finally, some general conclusions are drawn. According to Article 1.26 of the Criminal Procedure Code, a witness refers to a person who can provide information about a criminal case that they heard, seen or experienced for investigation, prosecution, and trial purposes.\textsuperscript{11} Likewise, as per the Witness and Victim Protection Law Article 1 point 1 states that

"Witness refers to a person who, for the investigation, prosecution, and examination purposes in court, may provide information about a criminal case which they personally saw or heard".

The authors’ center their objective on conducting research on the legal protection for witnesses under the Witness and Victim Protection Law.

2. Research Problems

The following problems will be addressed in the study:

1. How is the regulation of legal protection for witnesses and victims applicable in the context of the Witness and Victim Protection Law?

2. To what extent does the current regulation of legal protection for witnesses and victims under the Witness and Victim Protection Law contribute to ensuring justice and legal certainty?
3. Method

Normative Juridical Approach refers to a method that relies on primary legal materials. It involves examining theories, concepts, legal principles, and laws and regulations related to research on Legal Protection for Witnesses, as outlined in the Witness and Victim Protection Law.

4. Finding and Discussion

Legal protection arrangement for witness under the Witness and Victim Protection Law

Legislation has been enacted for the protection of a wide range of human rights, including the protection of women, the protection of children, and the elimination of domestic violence, protection for women, and laws to eliminate domestic and sexual violence. One type of admissible evidence in criminal justice investigations is witness and/or victim testimony regarding their firsthand experience of a crime.

Law enforcement officials may face difficulties in ascertaining the specifics of a crime committed by perpetrators when witnesses and/or victims are not present. Protection for witnesses and victims is of utmost importance in the criminal justice process due to the potential physical and psychological threats they may face from certain parties. The existence of these threats can impede the process of justice. Therefore, it is crucial to maintain objectivity and avoid biased language when discussing this issue.

Also, a challenge occurs in the criminal justice process is that the only witness presented in court is often the accused. However, it is worth noting that the Criminal Law system follows the principle of 'Unus Testis Nullus Testis' which means that one witness alone is not sufficient evidence. Therefore, it is necessary to provide additional support to ensure that the judge can make a well-informed and valid decision following the law.

According to Article 184 of the Criminal Procedure Code, witnesses play a crucial role in the criminal justice process as the primary source of evidence, and the unavailability of witnesses can significantly affect a criminal case. Hence, the position of witnesses holds great importance throughout the entire examination process, from
the commencement until the conclusion of the case. In many cases, violations of the law are brought to light by information provided by concerned members of the public that is used by the prosecution from the outset of the investigation and subsequently presented in court. Witness testimony serves as the primary evidence used to ascertain the culpability or innocence of a defendant or suspect.

Witnesses play a crucial role in providing and revealing facts that can be used as evidence to support an investigation and prove a case in court. In the law enforcement process, particularly in criminal law, witnesses are essential and their role has significant consequences for those appointed or designated as witnesses, including victim witnesses, reporting witnesses, and others involved in proving criminal cases.

It is worth noting that while the Criminal Procedure Code does not currently regulate aspects of witness protection, the relevant regulations can be found in the Witness Protection Law. As stated in Article 4 of Witness Protection Law, the primary objective of protection for witnesses and victims is to guarantee the safety of witnesses and/or victims throughout criminal justice proceedings.

The Criminal Procedure Code does not explicitly regulate the position of victims, except for those who are also witnesses. However, the FSP Law provides provisions and guarantees of protection for witnesses and/or victims, including victims who are not witnesses and their family members. The protection for victims of criminal acts, particularly those of gross violation of human rights, is addressed by the Witness and Victim Protection Law and other implementing regulations. The Government Regulation No. 44/2008 provides compensation, restitution, and assistance to witnesses and victims.

The forms of protection for witnesses and victims based on the Witness and Victim Protection Law are listed as follows:

1. Protection of personal security, family and property and freedom from threats relating to testimony that will, is or has been given.
2. Involvement in the process of choosing and determining the form of protection and security support.
3. Testifying without pressure
4. Obtaining an interpreting service
5. Freedom from tricky questions
6. Receiving information on the progress of their case
7. Receiving information on the court decisions
8. Being informed when the convicted person is released
9. Having their identity kept secret
10. Receiving a new identity
11. Receiving a temporary place of residence
12. Obtaining a new place of residence
13. Receiving reimbursement of transportation costs
14. Receiving legal counsel assistance
15. Obtaining temporary living expenses until the time limit for legal protection expires
16. Receiving assistance

The purpose and scope of protection for witnesses and/or victims of criminal acts is regulated by Article 5 of the Witness and/or Victim Protection Law. The Witness and Victim Protection Agency ensures that the rights of witnesses and/or victims are protected in accordance with the law. Individuals who have experienced human rights violations, acts of terrorism, trafficking, torture, sexual violence, or persecution are entitled to certain facilities, including:

1. Medical assistance
2. Psychosocial and psychological rehabilitation assistance

Victims are entitled to apply to the court through the Witness and Victim Protection Agency in the form of the following rights:

1. Compensation in cases of gross human rights violations and victims of terrorism.
2. Restitution or compensation that is the responsibility of the perpetrators.

Witness and Victim Protection Agency is a non-structural institution established and responsible for handling the provision of protection and assistance to witnesses and victims established due to the implementation of the policy of the Law on Witness
and Victim Protection, in terms of the political law of witness and victim protection, this institution enters into different operational context issues.

The Witness and Victim Protection Agency as an institution mandated by the Law on Witness Protection is based on its duties and functions, namely:

1. Providing protection services and assistance to witnesses and victims in every criminal justice process.
2. Facilitate steps to select victims of criminal acts, especially in applying for compensation and restitution.
3. Cooperate with relevant and authorized agencies in the implementation of witness and victim protection.

The enactment of Law on Witness and Victim Protection Agency considers victim protection as part of social policy. This is in line with the perspective of understanding victims as a social construct, which is reflected in legislation.

Victims of crime can participate in the criminal justice process in two different ways. First, the victims are present as witness. The role of the victim is to provide testimony regarding crimes under investigation, during the prosecution stage, and at trial. Second, the victim may file a claim for compensation against the perpetrators of the crime that caused harm or suffering. To obtain witness and victim protection from the Witness and Victim Protection Agency, below is the provided mechanism.

a. The party concerned may submit the request for protection in writing, either on their own initiative or by a representative or authorized official to the Witness and Victim Protection Agency;
b. The decision to provide protection and assistance to witnesses and/or victims will be made by the Witness and Victim Protection Agency in a plenary meeting. If the Witness and Victim Protection Agency accepts the application, the witness and/or victim must sign a statement agreeing to follow the terms and conditions of witness and victim protection.
c. The protection is provided to the witnesses and/or victims, as well as their family, from the moment they sign the statement of willingness.
d. Protection for witnesses and victims has been provided since the signing of the protection agreement.
e. Financing for witness and victim protection is provided by the state budget.
f. Termination of protection for witnesses and victims is only possible with the following valid grounds:
   a) The witnesses and victims request it themselves or at the request of an authorized official;
   b) The witnesses and victims violate the provisions of the agreement; or
   c) The Witness and Victim Protection Agency determines, based on convincing evidence, that the witnesses and/or victims no longer require protection.

The Witness and Victim Protection Agency provides protection to witnesses regardless of their affiliation with the regional or central government. The difference lies in the reach and pace of Witness and Victim Protection Agency in handling cases, which is currently centered in the central government. However, even though the Witness and Victim Protection Agency does not have representatives in the regions yet, it will prioritize accelerating the handling of witnesses and victims who are in danger and require immediate protection. The Witness and Victim Protection Agency collaborates with related agencies in the region to provide temporary and fast protection to witnesses and victims in the area.

A more detailed mechanism for protection for witnesses and victims is regulated in the Chair Regulation of the Witness and Victim Protection Agency Number 6/2010, which outlines procedures for providing such protection. Chapter 2 outlines the requirements and procedures for protection applications, particularly in part one of the application.

The court will make decisions regarding compensation and restitution, while government regulations regulate further provisions for compensation and restitution.

With the permission of the judge, witnesses and/or victims who feel seriously threatened may testify without being physically present in court. Additionally, written testimony may be submitted by signing the minutes containing the contents of the testimony before an authorized official. In addition, witnesses and/or victims can have their testimonies heard directly via electronic media accompanied by authorized officials. Witnesses, victims, perpetrator’s witnesses, or reporters cannot be legally prosecuted either criminally or civilly for reports or testimony given in good faith.
Legal Protection for Witnesses and Victims under the Witness and Victim Protection Law Have Provided Justice and Legal Certainty

The purpose of punishment is not only to prevent the defendant from repeating their actions but also to rehabilitate them so that they can reintegrate into society. However, it cannot be the sole consideration in achieving justice for the victim. It is worth noting that a victim of a crime can be an individual, a group of people, a community, a legal entity, or even a state. Justice for victims can be achieved by punishing the perpetrators. However, if the criminal cannot carry out their sentence due to the abolition of the right to sue and the loss of the right to carry out the crime, the state is still unable to provide justice for the victim.

The Criminal Procedure Code does not specifically define the term 'victim.' However, according to Article 1 point 2 of the Witness and Victim Protection Law, a victim refers to someone who has suffered physical or mental harm and/or economic loss as a result of a criminal act. Muladi provides an understanding of victims, who are individuals or groups that have suffered losses, including physical or mental harm, emotional distress, economic harm, or substantial interference with their fundamental rights, due to actions that violate criminal law in their respective countries.

Article 1(3) of Law No. 23/2004 on Elimination of Domestic Violence defines a victim as a person who experiences violence and/or threat of violence in the domestic sphere. Article 1 number 2 of Government Regulation No. 2/2002 outlines the procedures for protecting victims and witnesses of serious human rights violations. The regulation emphasizes the importance of providing physical and mental protection to individuals or groups who have suffered due to such violations. This includes protection from threats, disturbances, terror, and violence from any party.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that victims of crime must be treated objectively, with full attention and respect for their dignity. They should be given the right to claim compensation immediately as long as the regulations permit exists. Legal and administrative mechanisms must be formulated and ratified to enable crime victims to obtain compensation. If the perpetrators cannot provide comprehensive compensation, the
The state is obliged to provide compensation to the victim or their family in cases of serious physical or mental harm.

The core of truth is fairness (just), and upholding truth according to the law is upholding justice according to the law. Law enforcement should be objective and impartial, applying the law without discrimination or consideration of its consequences. It should be based on human essentials of truth and justice. The Indonesia’s existing regulations indicate that the state’s responsibility to victims is distinguished based on whether the suspect is criminally responsible or serves their sentence. The state’s responsibility is limited to victims as stated in the statutory regulations. According to the Witness and Victim Protection Law, the state provides compensation to the victims of serious human rights crimes. Also, the Government Regulation No. 44/2008 asserts that compensation is provided by the state if the perpetrators are not able to provide full compensation for the losses as their responsibility.

For instance, a person who intended to purchase medicine for their dying child was robbed on the way, and thus, he could not save his child. This is a criminal law on theft or robbery, causing deep suffering for the victim who had their money stolen. The stolen money is their only hope to save their child in the limited time available. In this case, accountability cannot be demanded from the state if the perpetrators are not caught, or if they escape before the expiry date, during the investigation, prosecution, or trial, or if they are mentally ill or insane. All crimes must violate human rights, but the state only provides compensation for serious human rights violations, such as mass murder (genocide), arbitrary or extrajudicial killings, torture, forced disappearance of people, slavery, or systematic discrimination. It is worth noting that compensation is provided regardless of whether the perpetrators can be held responsible for restitution or not. This definitely violates the principle of equality before the law.

The statement suggests that legal protection for victims is not based solely on compensation in the form of material things. However, it is unclear what other forms of state responsibility to victims are being referred to. In criminal cases that require a report or testimony, or in cases of experienced losses, victims may be better off pursuing civil lawsuits, as they will only receive compensation. The state’s responsibility to victims is inseparable from constitutional reform.
The constitutional reform is based on the argument that the constitution comprises principles that govern the powers of the government, the rights of the governed, and the relationship between the two. Ahamad Kamil and M. Fauzan emphasize the importance of upholding the principle of equality, particularly in a pluralistic society as follows:

1. The objectives of the reform are to eliminate categorical and normative discrimination in law enforcement;
2. There is no legal discrimination based on gender, ethnicity, education, or socio-economic status; and
3. The principle of ‘equality before the law’ requires equal protection and equal justice for all. This means that everyone should receive equal protection on the law and equal justice under the law.

5. Conclusion

1. The Criminal Procedure Code (KUHP) does not currently yet have any provisions on protection for witness. However, Article 5 of the Witness and Victim Protection Law stipulates that the rights of witnesses and/or victims of criminal acts are determined by the Witness and Victim Protection Agency in certain cases. The Law provides protection for witnesses and victims, including personal security, protection of family and property, and freedom from threats related to their testimony. The process of choosing and determining the form of protection and security support is available to those who will, are, or have given testimony. Witnesses also have the right to testify without getting any pressure and receiving an interpreting service. Entrapment questions are also prohibited. The individual has the right to be informed of the progress of the case, the court's decision and the release of the convicted person. The individual also has the right to remain anonymous and to obtain a new identity or temporary residence. In addition, the individual may request the assistance of legal counsel and receive temporary living expenses until the end of the legal protection period.
2. Indonesia’s regulations regarding the state's responsibility to victims indicate a distinction in cases where the perpetrators are not criminally responsible or
does not serve their sentence. This responsibility is limited to victims who are explicitly stated in the legislation. According to the Witness and Victim Protection Law, the state provides compensation to the victims of serious crimes against human rights. In addition, the Government Regulation No. 44/2008 asserts that the compensation will be provided by the state if the perpetrators are not able to provide the full compensation as their responsibility.

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