

THE URGENCY OF THE WITNESS AND VICTIM PROTECTION INSTITUTION (LPSK) IN THE CRIMINAL JUSTICE SYSTEM

Sahat Maruli Tua Situmeang

Universitas Komputer Indonesia, Indonesia

ABSTRACT

This research aims to determine the role of the Witness and Victim Protection Agency (LPSK) in the Indonesian criminal justice system. Using normative legal research methods, this research uses a statutory and conceptual approach, with qualitative analysis. These findings reveal challenges in implementing LPSK, including legal ambiguity, structural obstacles, and cultural skepticism. To optimize the effectiveness of LPSK, collaboration between institutions is very important, in addition to reforming legal provisions and strengthening cultural perceptions. This study underscores the need for clearer regulations governing the functions and duties of LPSK, encouraging synergy between institutions, and increasing public understanding of witness and victim protection.

Keywords: Urgency, LPSK, Criminal Justice System

INTRODUCTION

Indonesia as a constitutional state emphasizes that government activities are carried out in accordance with the provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (as amended), sovereignty is in the hands of the people and is implemented according to the Constitution. This means that the system of government administration of the Republic of Indonesia must be based on the principle of popular sovereignty and the principle of the rule of law.(Munir Fuady, 2009)

Based on these principles, all forms of decisions and actions by government administrators must be based on the sovereignty of the people and the law, and not based on the power inherent in the position of the government administration apparatus itself.(Hidayat, 2017) In this regard, the legal system has a complex and technical nature,(Kadri Husin, Budi Rizki Husin, n.d.) Therefore, understanding the law cannot be done only by referring to the text of the law and comparing it with existing practices in reality. Moreover, in society, the implementation of the law is often different from what is regulated in the law itself. This happens in various aspects of law, including criminal law.

Witness and victim protection is one of the subsystems of the criminal law system.(Hardiyanti et al., 2014) Protection for witnesses and victims includes physical and psychological protection. Witness and victim statements are information from crime victims to clarify and complete the interpretation of crime victims.(Laoly, A. Y., & Malau, 2020)

So far, attention to the presence of witnesses and victims in the criminal justice process has been inadequate, both from the public and from law enforcement. The Witness and Victim Protection Agency (LPSK), which was formed based on Law Number 13 of 2006 concerning Witness and Victim Protection, should function independently to ensure that the rights of witnesses and victims in Indonesia are properly fulfilled. This law was created with the aim of completing the procedural framework in criminal justice, so that protection mechanisms for witnesses and victims can be integrated in the criminal justice system. This aims to make the Indonesian criminal justice system

focus not only on perpetrators of criminal acts, but also on the rights of witnesses and victims.

The existence of the LPSK is an important institution in the criminal justice process, this is because one of the main roles of the LPSK is to provide protection for witnesses and victims of criminal acts. Often, witnesses and victims can be vulnerable to intimidation, threats, or even retaliation on the part of the defendant or perpetrator of the crime. LPSK is here to ensure that witnesses and victims feel safe and protected when giving testimony or attending the judicial process. By providing adequate protection for witnesses and victims, the criminal justice system can run more smoothly. Witnesses and victims who feel safe will be more likely to cooperate with investigators and the court, thereby enabling the judicial process to run better and providing legal certainty. Protection of witnesses and victims also supports law enforcement efforts. With strong testimony from witnesses and active participation from victims, law enforcement can be more effective in uncovering crimes and punishing perpetrators. LPSK plays an important role in ensuring that witnesses and victims feel comfortable providing important information to law enforcement. Therefore, without adequate protection, witnesses and victims may become targets for intimidation or threats. This can hinder the investigation and justice process, as well as reduce public confidence in the justice system. With LPSK providing protection, the potential for intimidation can be minimized, thereby allowing the judicial process to run more fairly and efficiently. Sex workers not only provide physical protection for victims, but also help in empowering them. This may include providing psychological support, information about their rights, as well as assistance in accessing support services such as legal aid and rehabilitation.

This can be seen from witnesses who are reluctant to reveal the information they have or the experiences they have had. The reasons vary, ranging from fear of threats and intimidation from parties involved in the crime, or because they have received real threats from the perpetrators of the crime. In situations like this, the task of investigators who have the authority to collect evidence becomes more difficult. The worry felt by witnesses and victims is not only caused by threats and intimidation from suspects or defendants, but also because of the complexity and complexity of the process they have to face. In addition, there is a fear that they themselves will be considered suspects. Therefore, in an effort to help reveal the incident, the status of a witness may change to a suspect. In this context, the original aim of providing assistance in uncovering the case could actually have a negative impact on the status of the witness. Based on the background explanation above, the problems to be researched are: (1) How is the policy formulation of the Witness and Victim Protection Agency (LPSK) in its efforts to find the truth connected to law enforcement efforts?, (2) How is the Witness and Victim Protection Agency (LPSK) implemented in the criminal justice system?, (3) How is the optimization of the Witness and Victim Protection Agency (LPSK) connected to law enforcement efforts?

Research related to the role of the LPSK is not something new, there have been several studies that support this research, including research conducted by Sofyan Rauf, Hasjad and Sabri Guntur with research entitled the effectiveness of the role of the Witness and Victim Protection Agency (LPSK) in protecting witnesses to crimes of gratification, in Sibatik Journal Volume 1 Number 3 of 2022, which said that the effectiveness of the role of the Witness and Victim Protection Agency (LPSK) in protecting witnesses to crimes of gratification has not been maximized, due to a lack of socialization in the community, especially in areas regarding the existence of the Witness and Victim Protection Agency as institutions tasked with protecting witnesses. The large number of witnesses/reporters of gratification who do not know the procedures for requesting protection, there are no Witness and Victim Protection Agency offices established in the regions, thus slowing down the process of providing protection services to witnesses/reporters of crimes of gratification, the lack of cooperation between law enforcement agencies in terms of witness protection. gratification crime, limited duties and authority of the Witness and Victim Protection Agency in Law Number 13 of 2006 concerning Witness and Victim Protection. (Rauf et al., 2022)

Furthermore, research was conducted by Muhammad Junaidi, Wenisa Zahara, Danar Aditya Santoso and Nurlaili Rahmawati in research entitled the role of the Special Witness and Victim Protection Agency (LPSK) in protecting justice collaborators in the murder case of Nofriansyah Yoshua Hubarat in the journal Tahkim (Journal of Islamic Civilization and Law). Volume 19 Number 1 of 2023 which states that in the case of the murder of Nofriansyah Yoshua Hutabarat, there were a number of Justice Collaborators who provided important information to assist the law enforcement process. LPSK provides protection and rehabilitation to

the Justice Collaborator, such as providing physical, psychological and social security as well as providing legal assistance. Apart from that, LPSK also ensures that the Justice Collaborator's rights in this case are fulfilled, such as the right to safety, the right not to receive threats or intimidation, and the right not to be subject to criminal sanctions for his involvement in the criminal act.(Junaidi & Zahara, n.d.) Furthermore, research was conducted by Christian Goklas and Beniharmoni Harefa with the research title optimizing the role of witness and victim protection institutions (LPSK) in assisting in providing restitution for criminal acts of child trafficking in Indonesia in the journal of legal sciences and humanities Vol. 8 No. 5 of 2021 which states that the implementation of providing restitution is still faced with challenges where providing restitution requires supporting evidence, the willingness of the victim to report, and awareness of the perpetrator himself in paying restitution.(Goklas et al., 2021)

Based on this, the research conducted by the author is seen from the focus of the research, namely considering more about how the LPSK functions in maintaining justice and protecting the rights of witnesses and victims, while previous research focused more on the specific challenges faced by the LPSK in certain cases, such as gratification. or child trafficking cases. Furthermore, looking at the scope of the research, this research covers aspects such as policy formulation, cooperation between law enforcement agencies, and integration of LPSK in a broader legal framework. Meanwhile, previous research tends to focus more on specific cases or certain aspects of the LPSK's role, such as protection of justice collaborators or recovery for child trafficking victims. Furthermore, judging from the research objectives, the research carried out aims to provide a more holistic understanding of the urgency of witness and victim protection and the role of LPSK in the criminal justice system as a whole. The aim is to provide comprehensive insight into how LPSK can increase its effectiveness in maintaining justice and protecting individual rights. Meanwhile, previous research tends to be more limited to more specific objectives, such as identifying challenges in providing restitution for victims or increasing protection for certain witnesses. Thus, the research conducted by the author is different from previous research.

LITERATURE REVIEW

The criminal justice process consists of at least 3 (three) components of legal substance involved in judicial activities, namely first, criminal procedural law which regulates how the judicial process is carried out. Second, material criminal law, namely the law that determines who and what acts, as well as the punishment determined, to test or maintain whether there has been a violation of the material criminal law. Finally, the criminal implementation law as the end of the criminal justice process which has been carried out in accordance with legal procedures (procedural law) means that it is proven that there has been a material violation of criminal law and as a consequence the law violator must undergo sanctions that have been decided in criminal justice in a correctional institution. Therefore, the discussion of the criminal justice system is intended to understand the function of criminal law and criminal procedural law.(Prof. Dr. Kadri Husin, S.H. M.H; Budi Rizki Husin, n.d.)

Muladi stated that the criminal justice system has two dimensions. On the one hand, it functions as a means for society to contain and restore crime at a certain level (crime containment system). On the other hand, it also functions as secondary prevention, namely trying to reduce crime among those who have committed criminal acts and those who intend to commit crimes, through the process of detection, punishment and criminal execution.(Joko Sriwidodo, 2020)

Law no. 13 of 2006 in its general provisions states that the Witness and Victim Protection Agency, hereinafter abbreviated to LPSK, is an institution tasked with and authorized to provide protection and other rights to witnesses and/or victims as regulated in the Law.(Erly Pangestuti, 2017) With an explanation of Law Number 13 of 2006 concerning Protection of Witnesses and Victims, it is stated: "In order to foster community participation in uncovering criminal acts, it is necessary to create a conducive climate by providing legal protection and security to everyone who knows or discovers something that can help uncover criminal acts that have occurred and report these matters to law enforcement." Furthermore, it is stated that such a reporter must be given adequate legal protection and security for his report, so that he does not feel threatened or

intimidated either for his rights or his life." The formation of LPSK by the government shows a positive response from the state in looking at criminal law enforcement in providing protection for witnesses and victims as mandated by Law Number 13 of 2006 and in order to comply with the principles of "Good Governance", namely upholding the supremacy of the law.(Sururiyah, 2024)

METHODOLOGY

This paper uses normative legal research methods because the focus of the study departs from norms, regulations, legal theory so that it has the task of systematizing positive law, using approaches: statutory approach, conceptual approach, and analytical approach. The legal material search technique uses document study techniques, and research analysis uses qualitative analysis. This research method is descriptive with a normative juridical research type, using a statutory approach and a conceptual approach.

DISCUSSION

Policy Formulation of the Witness and Victim Protection Agency (LPSK) in Efforts to Seek the Truth Linked to Law Enforcement Efforts

Law enforcement is the procedure through which legal aspirations are translated into actuality and adhered to by the populace. There is a growing yearning within Indonesian society for the vigorous application of authoritative laws, aiming to satisfy a collective desire for justice and tranquility. The process of law enforcement involves implementing laws appropriately, overseeing their execution to prevent infractions, and, should violations arise, reinstating the breached laws to reinforce their authority.(Candra et al., 2021)

Law enforcement encompasses more than just procedural logic; it also involves human interaction with all its complexities and traits,(Mulyadi, D. L., & Sh, 2023) Consequently, this results in diverse attributes in executing the law. Aligned with the constitutional legal tenets, which advocate for equality of all citizens under the law (equality before the law), the objective is to furnish assurances of safeguarding and legal assurance to facilitate a sound criminal justice system (due process of law). Moreover, it aims to establish an impartial and transparent judiciary capable of instilling a sense of fairness within society.(Laia, 2021) The safeguarding of witnesses and victims assumes a pivotal role in the trajectory of the criminal justice process. This is because it enables witnesses and victims to provide testimony without apprehension or coercion, thereby facilitating the disclosure of the crime at hand.

The presence of Law Number 13 of 2006 regarding the Protection of Witnesses and Victims, alongside Law Number 31 of 2014 amending Law Number 13 of 2006, serves to enhance the procedural legal aspects within the criminal justice system. This framework aims to pursue substantive truth and ensure justice, as the efficacy of criminal justice invariably hinges on evidence and its robustness. Testimonies provided by witnesses and/or victims constitute a vital component of this evidence.

In its general provisions, it is stipulated that the LPSK is an institution entrusted with the responsibility and authority to offer protection and other entitlements to witnesses and victims as outlined in this law. However, this legislation does not delineate the specific duties and powers of the LPSK in further detail. Additionally, apart from this law, the safeguarding of witnesses and victims is also addressed in various articles of the Criminal Procedure Code, including Article 80, Article 108 paragraph (1), Article 133 paragraph (1), Article 134 paragraph (1), Article 160 paragraph (1b), as well as Article 98 paragraph (1), Article 99 paragraph (1), Article 100 paragraph (1), and Article 101.

This indicates that there are still ambiguities in legal provisions, particularly concerning the functions, responsibilities, and authorities regarding services for witness protection programs, facilitation of compensation and restitution requests for victims of criminal acts, provision of medical assistance and psycho-social rehabilitation, media coverage of crime, and institutional enhancement.

Implementation of the Witness and Victim Protection Agency (LPSK) in the Criminal Justice System

Legal protection refers to safeguarding through legal measures or protections prescribed by law, with the objective of preserving specific interests by transforming them into legal entitlements. In legal theory, "rights" are alternatively termed as subjective law. Subjective law constitutes the proactive dimension of legal relationships established by objective law, which encompasses norms, rules, and legal principles. (Philipus M. Hadjon, 1987)

In fulfilling its obligations and roles, LPSK frequently encounters challenges. These hindrances can be broadly categorized into two aspects. Firstly, there are constraints related to the institutional framework that are not adequately represented in the organizational structure. Secondly, obstacles arise due to limitations in substantive and operational areas concerning the authorities of LPSK, as currently stipulated in Law Number 13 of 2006 regarding the Protection of Witnesses and Victims, supplemented by Law Number 31 of 2014 amending Law Number 13 of 2006.

While observing the execution of Law Number 13 of 2006 regarding the Protection of Witnesses and Victims alongside Law Number 31 of 2014 amending the former, it is evident that the implementation is not operating optimally due to various hindrances. These impediments encompass structural, substantive, and cultural aspects of the legal framework, including the following:

a. Barriers in legal substance:

The legal provisions pertaining to medical care and psychosocial rehabilitation for witnesses and victims, as outlined in Law Number 13 of 2006 concerning Protection of Witnesses and Victims along with Law Number 31 of 2014 amending it, lack clarity. Additionally, the requirement for a certificate from an authorized official to confirm victim identity, as stipulated in standard operating procedures (SOP), faces practical challenges. In reality, this provision is ineffective as victims often prefer to keep their identities undisclosed due to prevailing societal stigmatization.

The regulations concerning psychosocial medical assistance, under the jurisdiction of LPSK, are not effectively implemented in community practice. Specifically, psychosocial medical assistance, encompassing both physical and psychological support, does not adequately include psychosocial services. Additionally, the process of obtaining administrative assistance from LPSK, facilitated by a certificate from KOMNAS HAM for access to psychosocial and medical assistance, necessitates completion prior to a court decision in the case.

The implementation of provisions concerning compensation and restitution has not been optimal in practice due to limited human resources responsible for these tasks. Furthermore, access to assistance from LPSK faces challenges as requests are only pursued if all administrative requirements, including responses from KOMNAS-HAM, are fulfilled. Consequently, there is a risk that victims in need of LPSK assistance may not receive it if administrative criteria are not met. Moreover, the provision of ongoing assistance throughout each process is hindered by limited funding from LPSK for victims.

The lack of clarity in legal provisions regarding the process of obtaining medical care and psychosocial rehabilitation for witnesses and victims, as stipulated in Law Number 13 of 2006 concerning Protection of Witnesses and Victims alongside Law Number 31 of 2014 amending it, underscores the need for comprehensive guidelines to ensure effective implementation.

Moreover, the requirement for a certificate from an authorized official to confirm victim identity, as outlined in standard operating procedures (SOP), poses practical challenges and may deter victims from seeking protection due to concerns about confidentiality and societal stigmatization.

Furthermore, while the regulations emphasize the provision of compensation and restitution for victims of criminal acts, challenges persist in accessing these services, particularly due to limited human resources responsible for processing requests and the stringent administrative criteria imposed by LPSK.

b. Barriers in the legal structure

The presence of LPSK, operating outside the criminal justice system, frequently leads to a lack of support from other law enforcement entities. The insufficient number of LPSK employees as human resources remains a challenge, and the budget dependency on the State Secretariat underscores LPSK's lack of autonomy. Additionally, the weakened position of LPSK impedes the effective protection of witnesses and victims.

The fragmented nature of the legal framework surrounding witness and victim protection, compounded by the positioning of LPSK outside the criminal justice system, highlights the need for structural reforms to enhance coordination and cooperation among law enforcement agencies.

c. Barriers in legal culture

The perceived subpar performance of LPSK, characterized by inadequate protection in society, has led to skepticism regarding the agency's independence and accountability in the eyes of the public. Additionally, the skepticism surrounding LPSK's independence and accountability within society underscores the importance of fostering a legal culture that promotes trust and confidence in the agency's ability to safeguard the rights of witnesses and victims effectively.

These circumstances underscore the critical significance of the Witness and Victim Protection Agency within the criminal justice system.

Optimization of the Witness and Victim Protection Agency (LPSK) in connection with law enforcement efforts

Law enforcement entails the endeavor to implement or enforce tangible legal norms as guidelines for participants in societal and state affairs. It involves striving to translate the legal ideals and concepts desired by the populace into reality. However, the effectiveness of law enforcement, particularly in the context of witness and victim protection, relies not only on the existence of legal frameworks but also on their practical application and enforcement by relevant authorities. (Dellyana Shant, 1988)

Principally, Law Number 13 of 2006 concerning Protection of Witnesses and Victims, alongside Law Number 31 of 2014 amending it, establishes regulations safeguarding the rights of witnesses and victims. These laws represent a significant step forward in recognizing the importance of protecting individuals involved in criminal proceedings. However, the mere existence of legislation is insufficient without robust implementation mechanisms and collaboration among various stakeholders.

To enhance the implementation of witness and victim protection, collaboration with various agencies is essential. While LPSK plays a central role in providing protection and assistance to witnesses and victims, effective collaboration with law enforcement agencies, judicial bodies, healthcare providers, and civil society organizations is crucial. This collaboration ensures a comprehensive approach to addressing the diverse needs of witnesses and victims, ranging from physical protection to access to legal and psychosocial support services.

Furthermore, the lack of public understanding regarding witness and victim protection underscores the importance of extensive and ongoing socialization efforts. Despite the legal provisions in place, many individuals may not be aware of their rights or the available support services. Therefore, continuous efforts to raise awareness and educate the public about witness and victim protection are essential. These efforts should include community outreach programs, public campaigns, and educational initiatives aimed at empowering individuals to recognize and report crimes while ensuring their safety and well-being.

In conclusion, while legislative frameworks such as Law Number 13 of 2006 provide a foundation for witness and victim protection, their effectiveness depends on collaborative efforts among stakeholders and ongoing public engagement. By fostering partnerships, enhancing awareness, and strengthening implementation mechanisms, Indonesia can improve its capacity to protect witnesses and victims and uphold the principles of justice and accountability within its criminal justice system.

CONCLUSION AND RECOMMENDATION

Legal certainty concerning the protection of witnesses and victims is ensured by the constitution and statutory regulations. However, the mandate of the Witness and Victim Protection Agency (LPSK) as an institution is outlined in Law Number 13 of 2006 regarding Protection of Witnesses and Victims, in conjunction with Law Number 31 of 2014 amending it. Despite this, they encounter obstacles in fulfilling their role, particularly due to unclear regulations regarding their functions, duties, and authorities related to witness protection programs, facilitation of compensation and restitution requests for victims of criminal acts, provision of medical assistance and psychosocial rehabilitation for victims of crime, as well as institutional strengthening. The implementation of the LPSK has not been fully effective due to various impediments such as challenges in legal substance, legal structure, and legal culture, resulting in hindrances to the execution of witness and victim protection by the agency.

In order to enhance the effectiveness of the Witness and Victim Protection Agency (LPSK) in law enforcement endeavors, it is imperative to foster collaboration among agencies. Such collaboration aims to facilitate joint efforts in uncovering the truth and achieving fair law enforcement. Consequently, based on the findings of this analysis, the following actions are necessary: reformulating and reconstructing the provisions governing the LPSK, fostering synergy among agencies in the protection of witnesses and victims, and reinforcing cultural aspects in endeavors to protect witnesses and victims.

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ABOUT THE AUTHORS

Sahat Maruli Tua Situmeang, email: sahat@email.unikom.ac.id

Dr. Sahat Maruli Tua Situmeang, S.H., M.H. is an Associate Professor at Law at the Indonesian Computer University (FH-UNIKOM), with the position as Chair of the Legal Studies Program and also as a legal practitioner (Advocate and Legal Consultant), as the Expert Council of the Indonesian Advocates Association (PERADI), as the Expert Council of the Bandung Lawyer Club Indonesia (BLCI), as the Expert Council of Indonesian Archipelago Advocate Friends (SANI), as Chair of the Legal Advocacy Compartment of the Association of Indonesian Law Doctoral Professors (APDHI), as a member of the Indonesian Criminal Law and Criminology Society (MAHUPIKI), as a member of the Indonesian Lecturers Association (ADI), as a member of the Association of Experts & Lecturers of the Republic of Indonesia (ADRI), as Chairman of the Legal Bureau of the Indonesian Christian Council (MUKI) DPW West Java and as Regional Director of the Full Gospel Business Man Fellowship International (FGBMFI) West Java 2, as Pancasila Ambassador from BPIP, and active in various other organizations.