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THE CONCEPT OF APPLYING LEGAL PROTECTION FOR WITNESSES IN UNCOVERING CORRUPTION CASES BASED ON JUDGE'S DECISION NUMBER 34/PID.SUS-TPK/2020/PN.JKT.PST.

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ABSTRACT

This study aims to analyze the legal efforts undertaken in the context of protecting witness-victims in corruption cases, particularly related to the return of assets of corruption, based on the judge's decision Number 34/Pid.Sus-TPK/2020/PN.Jkt.Pst concerning the Jiwasraya Case. The focus of this research is to identify and analyze the protective measures provided to witness-victims in order to be able to provide information that supports the asset recovery process. The research method used is a normative approach using laws, regulations, and court decisions as a reference. Data was collected through a literature study and analysis of documents related to the Jiwasraya case and the legal framework related to the protection of victim witnesses. The results of the study show that in the judge's decision, there are legal efforts made to protect witness victims in order to return the assets of corruption. These protection efforts include safeguarding the identity of witnesses, providing physical and psychological protection, as well as granting privileges to witness-victims in giving testimony in court. However, several obstacles were found in efforts to protect victim witnesses. Some of them are intimidation or threats against witness-victims, lack of understanding and awareness about witness protection, and difficulties in providing long-term security guarantees for witness-victims. The conclusion of this study is that legal efforts to protect victims-witnesses in corruption cases are very important in returning the assets of corruption. Effective protective measures can increase the confidence of witness-victims to provide accurate testimony and support a fair and transparent asset recovery process.

Keywords: Witness Victim Protection, Return of Corruption Crime Assets, Judge's Decision, Jiwasraya Case

INTRODUCTION

Juridically, protection for witnesses in criminal acts of corruption is guaranteed protection for witnesses and victims. They have an important role in the criminal justice process so that with the testimony of witnesses and victims provided free from fear and threats, they can uncover a crime based on Article 1 point 1 of the Law. -Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims that a witness is a person who can provide information for the purposes of investigation, investigation, prosecution and examination in court hearings about a crime that he himself heard, he saw for himself, and/or he experienced it himself. Furthermore, victim-witnesses are individuals or parties who are direct victims of corruption or have relevant information in disclosing corrupt practices.¹

The involvement of victim witnesses in corruption cases can be the key to uncovering the truth, strengthening evidence, and ensuring justice is achieved. However, giving testimony in corruption cases often has the potential to endanger the safety and well-being of witness-victims. Perpetrators of corruption can intimidate, threaten, or coerce victim witnesses to prevent them from giving honest and accurate testimony. In addition, witness victims can also experience severe psychological pressure as a result of being involved in complex corruption cases involving those in power.² Therefore, the protection of victim witnesses in corruption cases is very important. The protection of witness-victims aims to ensure the safety, welfare and integrity of witness-victims during the legal process. This protection includes securing the identity of witnesses, physical and psychological protection, meeting basic needs, and granting special rights to witness victims.

It is in this context that it is important to examine and analyze the legal efforts made for the protection of witness-victims in corruption cases and the return of assets of corruption. Through this research it is hoped that it will provide a better understanding of the importance of protecting witness-victims, the challenges faced, and the legal steps that need to be taken to increase the effectiveness of the protection of witness-victims in order to uncover the truth and recover assets obtained through corruption. Based on the judge's decision Number 34/Pid.Sus-TPK/2020/PN.Jkt.Pst regarding the Jiwasraya case involving the defendant JOKO HARTONO TIRTO. This case dates back to 2002. Insolvency (reserves smaller than they should be) IDR 2.9 trillion. In 2004 insolvency with bankruptcy risk reached IDR 2.76 trillion. In 2006, the company's equity was negative at IDR 3.29 trillion and the assets owned were much smaller than the liabilities. BPK gave a disclaimer opinion (did not express an opinion) on the 2006-2007 financial statements because the presentation of reserve information could not be trusted to be true. 2008 The company's deficit was IDR 5.7 trillion.

Based on the case above, that will be the point of the problem that will be discussed regarding the confiscation in the Jiwasraya case which is the result of a criminal act of corruption against the perpetrators of corruption that empirically is not complete and will always be a weakness in law enforcement. The criminal act of corruption in the Jiwasraya case. Based on this, in handling it, it is mandatory to pay attention to the aspect of confiscating assets. Criminal acts of corruption as one of the vital aspects in the legal construction of policies on corruption crimes. then the legal issue is how the concept of protecting witness-victims in corruption cases,

¹ Ermansjah Djaja. 2010, *Meredesain Pengadi/an TindakPidana Korupsi, Implikasi Putusan Mahkamah Konstitusi Nomor 012-016- 019/PUU-IV/2006*. Jakarta: Sinar Grafika, h. 11.

² Friedman, Lawrence M. 2011. *Sistem Hukum: Perspektif Ilmu Sosial, Diterjemahkan oleh M.Khozim, Ciet. Ke-4*. Bandung: Nusa Media, h. 62

especially related to returning assets of criminal acts of corruption, which was carried out in the judge's decision Number 34/PID.SUS-TPK/2020/PN.JKT.PST regarding the Jiwasraya case and how application of legal protection for witnesses to victims in efforts to return assets of corruption crimes in the judge's decision number 34/Pid.Sus-TPK/2020/PN.Jkt.Pst concerning the Jiwasraya case.

RESEARCH METHOD

The research method that can be used to examine these legal issues is the normative research method. The normative research method is a research method that focuses on studying applicable legal materials, such as laws, decisions. The normative research method will involve an analysis of relevant legal provisions, both at the national and international levels, relating to the protection of witnesses-victims in corruption cases and the return of assets from corruption. This research will also involve an analysis of court decisions which are used as references in the research, namely Decision Number 34/PID.SUS-TPK/2020/PN.JKT.PST relating to the Jiwasraya case. The results of normative research are expected to provide an in-depth understanding of the concept of witness-victim protection in corruption cases and return of assets from criminal acts of corruption, as well as to contribute to the development of more effective legal policies in handling corruption cases.

DISCUSSIONS

1. The Concept of Protecting Victim Witnesses in Corruption Cases, Particularly Related to the Return of Corruption Crime Assets, Which Was Done In Judge Decision Number 34/PID.SUS-TPK/2020/PN.JKT.PST concerning the Jiwasraya Case

The concept of protecting victim-witnesses in corruption cases involves efforts to protect the identity, safety and well-being of victim-witnesses when they provide information regarding criminal acts of corruption that occurred involving PT. Jiwasraya. This concept is based on the principles of justice, truth and public interest. In corruption cases, victim witnesses often play a key role in uncovering the truth and proving the existence of criminal acts of corruption at PT. Jiwasraya. Protection of victim witnesses is very important because they are at risk of experiencing threats, intimidation, or even violence from parties involved in corruption cases. Therefore, the concept of victim-witness protection involves steps to ensure that victim-witnesses can testify safely, without fear or pressure.

The concept of protecting victims in uncovering cases at PT. Jiwasraya is based on the principle of justice, which guarantees that every individual, including victim witnesses, has the right to get protection in the justice system. The principle of truth is also an important basis in this concept, in which the protection of witness-victims aims to ensure that the testimony given is honest and trustworthy. Thus, this concept plays a role in ensuring that a fair and accurate judicial process can be achieved. In addition, the protection of witness-victims in corruption cases is also based on the public interest. Cases of corruption are detrimental to society as a whole, because they drain public resources and hinder development. By protecting victim witnesses, the process of uncovering the truth and prosecuting corruptors can run more effectively, thereby helping to restore public trust and provide a deterrent effect against perpetrators of corruption.³

³ Marfuatul Latifah, 2015, "Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia", *Jurnal Negara Hukum*, 6(1), h. 26

Based on the provisions of Article 5 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, it regulates the right to protection for witnesses and victims in criminal acts of corruption. Witnesses and Victims have the right to: a. Obtain protection for personal security, family and property, and be free from threats regarding the testimony that will be, is being given, or has been given.

Legal protection for witnesses as a form of acknowledging the rights of witnesses and victims to obtain protection for their personal security, family and property. This aims to protect them from threats related to the testimony that will be, is being, or has been given. Personal security protection involves taking steps to maintain the security and safety of witnesses and victims in order to avoid physical threats, violence, intimidation or countermeasures that may be taken by parties related to the corruption case being handled. Protection of family security is also important, because the families of witnesses and victims can also become targets of threats or intimidation as a result of their role and involvement in the case. By guaranteeing protection for personal, family and property security, Article 5 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims aims to create an environment that is safe and free from threats for witnesses and victims. It is hoped that this will encourage their active participation in the judicial process, ensure honesty and openness in giving statements, and protect them from possible negative impacts that could arise as a result of their testimony in corruption cases.⁴

The importance of protecting witness-victims in the case of PT. Jiwasraya is very diverse. Firstly, victim witnesses play a very important role in uncovering the truth and providing evidence that can lead to the successful prosecution of corruptors. Their testimony is often the main instrument in establishing the facts in the case and holding perpetrators accountable. Second, the protection of victim witnesses ensures their security and safety. By protecting their identity and taking steps to prevent any form of intimidation or harm, it encourages witnesses to come forward and give honest testimony without fear of reprisal. This in turn facilitates a more effective judicial process and enhances the overall integrity of the legal system. In addition, the protection of victim witnesses in corruption cases serves the public interest. Corruption impacts society as a whole, undermines public trust, erodes public resources and hinders development. By encouraging witnesses to participate and cooperate in investigating and prosecuting corruption cases, the justice system can work to fight corruption more effectively and restore public confidence.

Overall, the concept of victim-witness protection in the case of PT. Jiwasraya is very important in ensuring justice, maintaining the rule of law, and fighting corruption effectively. By providing a safe environment for witnesses to come forward and share their testimony, it strengthens the judicial process and contributes to the overall integrity and credibility of the legal system.

2. Legal Protection of Victim Witnesses in Efforts to Return the Assets of Corruption Crimes in the Judge's Decision Number 34/Pid.Sus-TPK/2020/PN.Jkt.Pst Concerning the Jiwasraya Case

Corruption crimes in the Jiwasraya case included various acts such as bribery, manipulation and other actions that harmed state finances, the country's economy, as well as the welfare and interests of the people. In the Jiwasraya case, there were corruption activities that

⁴ Yusuf, M. 2013, *Merampas Aset Koruptor; Solusi Pemberantasan Korupsi di Indonesia*. Jakarta: Penerbit buku Kompas. Jakarta, h. 24

were structured and carried out systematically, with the aim of taking personal or group profit from funds that should have been used for the public interest as happened based on Judge Decision Number 34/PID.SUS-TPK/2020/PN.JKT. PST in the Jiwasraya case emphasized that the corruption that occurred in the case involved an element of intent. The perpetrators of corruption intentionally carry out manipulations and activities that are detrimental to state finances, so that they can be declared as intentional acts and deliberately detrimental to the public interest.

In this context, the judge's decision confirms that the Jiwasraya case is a clear example of corruption which has the characteristics of being systematic, structured, and involves an element of intent in the legal actions it takes. This shows the seriousness of the Jiwasraya case as a criminal act of corruption which harms the public interest and reinforces the need for strict handling of similar corruption cases in order to maintain integrity, justice and the interests of the people. Philosophically, the criminal act of corruption is a crime committed by a ruling legal subject who holds a government position that has the authority to carry out a legal act within the framework of implementation, especially in the field of the state budget. Crime Crime of PT. Jiwasraya was actually carried out because there was an element of opportunity to commit corrupt behavior even though it was known that the act committed was an act that was included in the category of criminal act of corruption so that special treatment was needed to eradicate acts of corruption.⁵

Protection of victim witnesses in the case of PT. Jiwasraya is important because corruption crimes often involve actors who have dominant positions or power. Victim-witnesses, in this case, are individuals who have been direct victims or have knowledge of corrupt practices that have taken place. Protection of victim witnesses is important because of the corruption involving PT. Jiwasraya often involves strong and influential networks. Victim witnesses who provide information about criminal acts of corruption run the risk of becoming targets of threats, intimidation, or reprisals from corruptors or their networks. In many cases, victim witnesses may also be at risk of losing their job, reputation or even personal safety. considering, the corruption case involving PT. Jiwasraya has a broad impact and involves actors who have power and influence. Witnesses who have knowledge of corrupt practices in these cases can become the target of reprisals or threats from corrupt actors or related parties. In addition, victim witnesses also face the risk of losing their jobs, damaged reputations, and even personal safety. Corruptors or their networks can use any means to intimidate witness victims in order to stop them from giving testimony in support of the prosecution process.

Juridically eradicating criminal acts of corruption is not only limited to law enforcement but also balanced by existing legal policies. These two aspects are very important because the behavior of criminal acts of corruption is very complex, meaning that it is not simple in solving cases. Acts of corruption that have occurred between the number of those convicted of corruption and the results confiscated are often different. The amount confiscated was less than the amount prosecuted for corruption by corruptors, so this is the problem. Confiscations carried out by law enforcement officials who are given true authority must be completed in order to provide a sense of justice. Especially in the case of Jiwasraya.

Confiscation of assets resulting from state losses from corruption in the Jiwasraya case has become a series of criminal law settlements, but in practice there is no legal limit to then determine these assets. so that in its implementation it is necessary to separate the perpetrators

⁵ Baharuddin Lopa dan Moh. Yamin, 1987, *Undang-Undang Tindak Pidana Korupsi (Undang-Undang No. 3 Tahun 1971) Berikut Pembahasan Serta Penerapannya Dalam Praktek*, Bandung: Alumni, h. 6

who have been decided by the judge from the assets that will be confiscated as a result of the criminal act of corruption in the Jiwasraya case. This mechanism is not intended to undermine criminal law procedures because the main objective is to recover what has been a loss to the state.

Developments in international law show that confiscation and confiscation of proceeds and instruments of corruption are an important part of efforts to reduce crime rates.⁶ Therefore, a legal instrument is needed within the legal framework to enforce the law on corruption through the Draft Law on confiscation of assets in criminal acts of corruption. Formulative policies in confiscating assets as a result of the proceeds of a criminal act of corruption are currently contained in Law Number 30 of 2002 concerning the Commission for the Eradication of Criminal Acts of Corruption as well as Law 20 of 2001. This provision regulates legal settlements, namely through the Criminal Court. and pursued through the civil route on the basis of filing a lawsuit.⁷ Corruption is an act that destroys the development of a nation. The act of corruption has violated the mandate in the preamble of the 1945 Constitution of the Republic of Indonesia that is to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to advance public welfare. Based on this, the state has the full responsibility to provide protection for the Indonesian nation. the existence of criminal acts of corruption has brought misery to the people of Indonesia, in which the assets of criminal acts of corruption have become a major loophole in the completion of criminal acts of corruption.

Enforcement of criminal acts of corruption is not enough to take a textual legal approach to cases that have been decided, meaning that corruption cases that have been investigated and prosecuted as well as court decisions only focus on the perpetrators in their criminal acts of corruption, but forget the aspects that are the object of corruption. namely assets resulting from criminal acts of corruption are forgotten, because they become useless when cases of criminal acts of corruption have been concluded but still raise big question marks regarding assets resulting from criminal acts of corruption that have no legal basis. The paradigm that is built is no longer who committed the criminal act of corruption but how the assets of the criminal act of corruption can be saved by means of an asset confiscation mechanism. The perpetrators of criminal acts of corruption continue to undergo legal mechanisms in accordance with the judge's decision but the confiscation of assets of corruption crimes is carried out so that state losses can be returned. Based on this paradigm, what has been built will cover the legal vacuum in enforcing the law on corruption. Considering that the cost of enforcing corruption is not small, there will be disharmony between the cost of enforcing the law on corruption and the results of enforcing the law on corruption. If the law enforcement of corruption is not in harmony with the losses that have been successfully recovered in addition to the very large costs given, law enforcement in the eradication of corruption is considered a failure. Based on this, efforts to confiscate assets become important so that the amount that becomes a loss to the state can be recovered.⁸

Confiscation of assets in the criminal act of corruption through the draft legal product of the law on asset confiscation in acts of corruption in the framework of fulfilling legal needs as

⁶ Hartanti, Evi, 2007, *Tindak Pidana Korupsi*, Jakarta : Sinar Grafika, h. 34

⁷ Deypend Tommy Sibuea, R.B. Sularto, Budhi Wisaksono, 2016, "Kebijakan Hukum Pidana Dalam Perampasan Aset Hasil Tindak Pidana Korupsi Di Indonesia", *Diponegoro Law Review*, 5(2), h. 3

⁸ Soedjono D, 1997, *Pelacuran Ditinjau Dari Segi Hukum Dan Kenyataan Dalam Masyarakat*, Bandung, Karya Nusantara:, h. 38

stipulated in the 1945 Constitution of the Republic of Indonesia Article 28 I paragraph (4) The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. so the existence of the draft law on corruption is to provide for the advancement and enforcement of laws to pursue assets of corruption whose whereabouts are unclear. Losses suffered by the state as a result of corrupt acts are an injustice to the state if these losses are not recovered. On the other hand, it is unfair for corruptors if the state confiscates the assets they legally obtained. Based on the Decree of the People's Consultative Assembly of the Republic of Indonesia Number Xi/Mpr/1998 concerning State Administrators who are clean and free from corruption, collusion and nepotism, Article 2 paragraph (1) State administrators in executive, legislative and judicial institutions must carry out their functions and duties properly and responsibly to society, nation and state. So that in carrying out the functions and duties of the state in forming a policy in order to eradicate the practice of corruption. The existence of criminal acts of corruption, especially existing assets as a result of criminal acts of corruption, is part of the state's legal response by establishing a legal product policy so that the state losses experienced can be returned.⁹

Confiscation of assets in corruption is primarily oriented to saving all assets resulting from criminal acts of corruption. Rescuing assets The corruption crime was carried out to provide legal benefits.¹⁰ so assets resulting from criminal acts of corruption are carried out to return all state losses through the confiscation of these assets. this requires a further legal mechanism when in the verdict of corruption in fact there are still assets of corruption whose whereabouts are still unclear. Based on the provisions of the Supreme Court Circular of the Republic of Indonesia Number 3 of 2013 concerning Instructions for Handling Cases Procedures for Settlement of Applications for Handling Assets in Corruption Crimes and the Attorney General through the Attorney General's Regulation Number: Per027/A/JA/10/2014 concerning Guidelines for Asset Recovery issued as a response to the issuance of RI Supreme Court Regulation Number 1 of 2013 also regulates the existence of unknown assets as a result of these assets being assets resulting from criminal acts of corruption so that when these assets are later after a court decision states a verdict, the assets found still have strong legal force as part of a crime whose status has not been seized, then this condition can be carried out through a lawsuit to the district court to carry out legality for state losses based on findings of assets resulting from criminal acts of corruption.¹¹

CONCLUSION

The concept of protecting witness-victims in corruption cases, especially related to returning assets of criminal acts of corruption, which is implemented in the Judge's Decision Number 34/PID.SUS-TPK/2020/PN.JKT.PST concerning the Jiwasraya Case has an important role in ensuring justice and truth are realized. In the context of the Jiwasraya case, the victim-witness played a very important role in uncovering the truth and providing the necessary evidence to prosecute the perpetrators of corruption. Their testimony is the main instrument in establishing the facts in the case and ensuring the accountability of the perpetrators of the

⁹ Achmad Ali, 2012, *Menguak Teori Hukum Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence) Vol. 1 Pemahaman Awal*, Jakarta: Kencana Prenada Media Group, h. 148

¹⁰ Cassella, S. D. 2007, *Asset Forfeiture Law in the United States. Chapters 1 and 2*. York, NY:Juris Publishing. New, h. 92

¹¹ Imelda F.K. Bureni, 2016, "Kekosongan Hukum Perampasan Aset Tanpa Pemidanaan Dalam Undang-Undang Tindak Pidana Korupsi", *Masalah - Masalah Hukum*, 45(4), h. 294.

corruption crimes committed. The protection of victim witnesses in the Jiwasraya case includes aspects of personal, family and property security. This protection aims to protect them from threats, intimidation, or reprisals they may receive as a result of their testimony. By providing this protection, witness-victims feel safe and are compelled to provide honest and detailed information about the corruption that occurred.

The application of legal protection to witness victims in an effort to return assets of criminal acts of corruption in the Judge's Decision Number 34/Pid.Sus-TPK/2020/PN.Jkt.Pst is needed to prosecute perpetrators of corruption. The legal protection given to witness-victims includes protection of their personal security, family and property. This is important to protect victim witnesses from threats, intimidation, or reprisals that may be received as a result of their testimony. With this legal protection, witness-victims feel safe and are compelled to provide honest and detailed information regarding the criminal act of corruption that occurred. The application of legal protection for witness-victims also has a positive impact on the process of returning assets of corruption. With strong and credible testimony from the victim-witnesses, the evidence obtained can be used to establish the facts in the Jiwasraya case and ensure accountability for the perpetrators.

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