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The Process of Applying for Protection of Victims' Rights through the Witness and Victim Protection Agency (LPSK)

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Abstract: *The importance of legal protection for each community is one of the reasons for the issuance of Law Number 13/2006 on Witness and Victim Protection which was enacted on 11 August 2006. This research aims to find out, how the regulations related to victim protection in Indonesia. Then, how is the process of applying for protection of victims' rights through LPSK and finally, how is the influence of the protection provided by LPSK on victims for law enforcement. This research uses a normative method. The procedure for providing protection to witnesses and victims as regulated in Article 28 to Article 32 of Law Number 13 Year 2006 is a process that includes various procedures and requirements that must be fulfilled by witnesses and victims to be able to get protection from LPSK which is sometimes difficult for witnesses and victims. The influence of the Witness and Victim Protection Agency (LPSK) in protecting witnesses and victims has not been maximised, due to the lack of socialisation in the community, especially in the regions, about the existence of the Witness and Victim Protection Agency as an institution tasked with protecting witnesses and victims.*

Keyword: *Legal Protection, Victims, Witness and Victim Protection Agency (LPSK)*

INTRODUCTION

Legal protection for victims of crime as part of community protection can be realized in various forms such as providing restitution, compensation, medical services, and legal assistance. Legal protection includes all efforts to fulfill rights and provide assistance to provide security to witnesses and victims. (Asliani & Koto, 2022)

Regarding the equality of everyone before the law, there are still many problems because justice is not felt equally by everyone. Since law enforcement is not truly carried out in accordance with these principles, fair law enforcement efforts are needed. In general, criminal acts result in victims, and those who commit criminal acts need victims to justify their actions. One could argue that victims play a useful role in crime. Whether the victim wants it or not, there are people involved in criminal acts (crimes) who may participate intentionally or unintentionally. (Bill Clinton P. Simanjorang, 2020)

One of the main motivations behind the passing of Law No. 13/2006 on Witness and Victim Protection on August 11, 2006 was the importance of legal protection for all citizens. The Witness and Victim Protection Agency (LPSK), which is tasked with providing protection and assistance to witnesses and victims, is regulated in Law No. 13/2006 on Witness and Victim Protection.(Tuage, 2019)

For those who have experienced human rights violations or witnessed criminal acts, the presence of LPSK as an institution that handles witness and victim protection is at least a breath of fresh air. In the Indonesian criminal justice system, LPSK has an important role in the government's efforts to uphold justice and reveal the truth for victims and witnesses. The establishment of a state institution based on Law Number 13 of 2006 as amended by Law Number 31 of 2014 concerning the Witness and Victim Protection Agency is a form of legal relationship with state power.(Malau, 2020)

The purpose of Law No. 13/2006 on Witness and Victim Protection is to protect witnesses and/or victims when they provide testimony in the criminal justice process. According to Law No. 13/2006, protection is any effort made by LPSK or other institutions in accordance with the provisions of this law to uphold the rights of witnesses and victims and provide a sense of security.(Ismail Koto, 2022)

Indonesia presents itself as a state of law, which means that it is not governed by force (*machtstaat*), but by law (*rechtstaat*). Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia specifically regulates this assertion and serves as a foundation for Indonesia to prioritize and obey the law in the daily administration of the state. In general, the Anglo-Saxon common law tradition founded by Julius Stahl and A.V. Dicey also refers to the concept of the rule of law in addition to the *rechtstaat* of countries that adhere to the Continental European system. Julius Stahl argued that the notion of "*rechtstaat*" includes four fundamental components: division of powers, legal protection of human rights, government based on law, and administrative courts. A.V. Dicey, meanwhile, enumerated three essential elements of a rule of law: due process, equality before the law, and the rule of law. The famous phrase "the rule of law and not of man" derives from these three qualities; the rule of law is the law, not the individual.(Eleanora & Sari, 2019)

Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that all citizens are equal before the law and government and shall uphold the law and government with no exceptions, reflects the protection of victims of criminal acts. This implies that everyone must be treated equally before the law, including witnesses, defendants, victims, and citizens. The position of victims and witnesses who are still seen as complementary in the disclosure of criminal acts does not represent this.(Julianto, 2020)

It has been previously mentioned that the position of witnesses and victims is very important in revealing the substantive truth in Indonesian criminal law. In terms of guarantees of protection for victims of criminal acts, this can be in the form of witness protection, assistance, restitution, and compensation that have been determined by law. As stated in KUHAP Article 189 paragraph 4: "The statement of the defendant alone is not sufficient to prove that he is guilty of the act charged against him, but must be accompanied by valid evidence."(Ismail Koto, 2022)

Based on this introduction, the author can determine the formulation of problems related to the problems contained in this case, first, how is the regulation related to victim protection in Indonesia? Second, How is the process of applying for victim rights protection through LPSK? and Third, How is the effect of the protection provided by LPSK on victims for law enforcement.

Seeing the rise of violence and criminality in Indonesia, the author is motivated to conduct this research because it is imperative for victims or witnesses to receive protection in accordance with legal provisions. Protection includes the fulfillment of procedural rights of witnesses or victims, legal protection, and physical and psychological protection. The

purpose of protection is to ensure that the rights and obligations of witnesses and victims are upheld in accordance with applicable laws and regulations.

METHODS

This research uses normative juridical research methods, which are often referred to as pure legal research methods, doctrinal legal research methods, legal study research methods, and positive law study research methods. Legal research that focuses on written laws or regulations (law in books) or research based on social norms and regulations is known as normative juridical research. Normative juridical research can be categorized as literature study research in which primary, secondary, and tertiary legal materials are the main data sources. The majority of data comes from codified law or relevant rules in society. (Prof. Muhammad Siddiq Armia, M.H., 2022)

RESULTS AND DISCUSSION

Regulations Related to Victim Protection in Indonesia

Through KUHAP, victims can seek the right to compensation for losses incurred as a result of a criminal offense. The victim has the option to file a claim for compensation and request the presiding judge to decide whether to combine the examination of the criminal case and compensation. According to Article 98 of the Criminal Code, compensation claims are made against the recovery of costs that have been incurred by the injured party. (Kurnia, 2023)

The following rights also protect victims and witnesses in addition to those mentioned above:

- 1 File an objection to the termination of investigation or termination of prosecution. Article 80 of KUHAP, Victim as an interested third party.
- 2 Article 134 of the Criminal Procedure Code: allowing or refusing to allow the victim's family to perform an autopsy on the victim at the request of the investigator.
- 3 According to Article 168 of the Criminal Procedure Code, victims who are witnesses can refuse to give testimony.

The Law on Human Rights Courts also includes provisions for the protection of victims of crime. In particular, Chapter V, Article 34 of Law No. 26/2000 on Human Rights Courts provides for the protection of witnesses and victims, and Article 35 of Chapter VI confirms provisions for restitution, rehabilitation and compensation. Government Regulation No. 2 of 2002 and Government Regulation No. 3 of 2002 on compensation, restitution, and rehabilitation of victims of gross human rights violations were subsequently adopted, complementing the process of witness and victim protection in cases of human rights violations.

In addition, Article 4 of Government Regulation No. 2 of 2002 lists the following types of protection:

- 1 Protect the personal safety of witnesses and victims from threats to their body and mind.
- 2 Maintain the confidentiality of the identity of victims and/or witnesses.
- 3 Giving testimony in court during questioning without having to meet the suspect face-to-face.

LPSK has an important role in the implementation of the Witness and Victim Protection Law and its accompanying regulations. According to Law No. 13/2006, Government Regulation No. 44/2008, and Law No. 31/2014, LPSK is an institution tasked with providing protection and other rights to witnesses and victims mentioned in the Witness and Victim Protection Law. (Ransun, 2019)

Protection of victims of criminal acts as stated in Article 1 paragraph (8) of Law No. 31/2014. The following are the criteria listed in Article 28 paragraph (1) of LPSK for the protection of witnesses and victims of criminal acts:

The importance of witness and/or victim testimony;

- 1 The seriousness of the threat to the witness and/or victim;
- 2 Results of medical or psychological examinations of witnesses and/or victims; and
- 3 History of criminal offenses committed by the witness and/or victim.

The following are the conditions that must be met in order for LPSK protection to be granted to the Witness of the Perpetrator:

- 1 The criminal offense to be disclosed is a criminal offense in a particular case in accordance with the decision of LPSK as referred to in Article 5 paragraph (2);
- 2 The importance of testimony provided by the perpetrator witness in uncovering a crime;
- 3 The perpetrator witness is not the main perpetrator in the crime that he or she reveals;
- 4 Willingness to return assets obtained from criminal offenses committed and stated in a written statement;
- 5 The threat or fear of real threats, physical or psychological pressure on the Witness or his/her family if the criminal offense is revealed in accordance with the actual circumstances.

Paragraph (3) The following requirements apply to LPSK's protection of experts and whistleblowers:

- 1 The importance of expert and reporter testimony;
- 2 The seriousness of the threat that endangers the reporter and expert.

The aforementioned requirements are in accordance with applicable laws and regulations, but the many requirements for witness and victim protection are detrimental to victims, as they are the ones who handle most of the protection requests rejected by LPSK.(Tambajong et al., 2021)

Article 29(1) specifies the steps that must be taken to obtain protection. The steps mentioned in Article 5 are as follows:

- a. Witnesses and victims concerned, either on their own initiative or at the request of an authorized official, submit a written application to LPSK;
- b. LPSK immediately reviews the application as referred to in letter a; and
- c. No later than 7 (seven) days from the receipt of the request for protection, LPSK provides a written decision.

Article 29a specifically sets out the process for organizing the defense of minors who are witnesses or victims:

1. With the consent of parents or guardians, LPSK protection can be provided to minors who become witnesses or victims.
2. In the following situations, the permit referred to in paragraph (1) is not required:
 - a. The parent or guardian is suspected of being the perpetrator of a criminal offense against the child;
 - b. The parent or guardian is suspected of preventing the child from testifying;
 - c. Parents or guardians are unable to carry out their responsibilities as parents or guardians;
 - d. The child has no parent or guardian; or
 - e. Parents or guardians are unknown.
3. At the request of LPSK, the Chairman of the local District Court determines the protection of children who become Witnesses and/or Victims who do not require parental or guardian consent as referred to in paragraph (2).(Fevernova & Firmansyah, 2023)

The Process of Applying for Victim Rights Protection through the Witness and Victim Protection Agency (LPSK)

Article 28 of Law No. 13/2006 mentions several conditions that have been set by LPSK in providing protection and assistance to victims and witnesses. These conditions are as follows: The following factors are taken into consideration in determining the terms of the

LPSK protection agreement for Witnesses and/or Victims of Crime as referred to in Article 5 paragraph (2):

- a. The importance of Witness and Victim testimony;
- b. The level of threat that endangers Witnesses and Victims;
- c. The findings of a medical or psychological team's analysis of the Witness and Victim; and
- d. Witness and Victim's criminal history.

If a witness or victim meets the requirements listed above, they may be eligible for legal protection from LPSK, as described in Article 28. Article 29 of Law No. 13/2006 outlines the process of witness and victim protection. The article states as follows: The steps to obtain protection as referred to in Article 5 are as follows:

- a. The witness and/or victim concerned submits a written request to LPSK, either on their own initiative or at the request of an authorized official;
- b. LPSK immediately reviews the application as referred to in letter a;
- c. LPSK provides a written decision no later than 7 (seven) days after the application for protection is received.

The regulations outlined in Article 29 stipulate that requests for protection must be made in writing. In addition to the authorized official and the witness or victim, family members of the affected witness or victim as well as witness and victim advocates may also make a request. Parents or guardians of witnesses or victims who are minors may apply on their behalf. (Marpaung, 2022)

The application process is specifically regulated in LPSK Regulation No. 6/2010, which was created by the agency. According to Article 9:

- a. The applicant for protection is addressed to the Chairperson of LPSK through a letter or request from an authorized official as referred to in Article 4 paragraph (3) letter b. The Chairperson of LPSK then forwards the application to UP2 LPSK to conduct research on the completeness of the requirements in accordance with the provisions of this regulation;
- b. UP2 LPSK may cooperate with the authorized official or applicant to fulfill the requirements as referred to in Article 6 and Article 7;
- c. In addition to the requirements as referred to in Article 6 and Article 7, UP2 LPSK may request additional data or information related to the case, among others:
 - 1) The result of the examination report (BAP);
 - 2) The importance of testimony in cases;
 - 3) A summons from the police or prosecutor's office or court;
 - 4) A report or information letter to the relevant officials: police, State Commission, government, local government, relating to his/her testimony as a whistleblower;
 - 5) Letters from relevant agencies regarding the case.

The LPSK Chairperson will forward the received application to UP2 for consideration. The unit responsible for processing applications for protection for witnesses and victims in the context of carrying out the duties and functions of the LPSK is called the Application Reception Unit (UP2). Within 7 (seven) days of the application for protection being submitted, LPSK will give consideration to accept or reject the application based on the results of the examination that has been conducted.

In addition, Article 30 paragraph (1) of Law No. 13/2006 stipulates that: "Witnesses and victims must sign a statement of willingness to comply with the terms and conditions of witness and victim protection in the event that LPSK accepts the application of witnesses and victims as referred to in Article 29." Article 30 paragraph (2) regulates the statement of willingness to comply with the terms and conditions of protection that must be signed by witnesses and victims. This includes the following:

- 1 Willingness of witnesses and/or victims to testify in court;
- 2 Their willingness to comply with safety regulations

- 3 Willingness of the Witness and/or Victim not to have contact with other people without LPSK's permission while under LPSK's protection.
- 4 The willingness of the Witness and/or Victim to keep his/her whereabouts under LPSK protection confidential; and
- 5 Other matters deemed necessary by LPSK.

Witnesses and victims are often confused by the application process they must go through to obtain protection from LPSK. This often causes witnesses and victims to be reluctant to seek protection from LPSK and choose to remain silent. Victims and witnesses feel unaware of the protocols outlined by LPSK. This is especially true for victims and witnesses who are not legal experts. Therefore, these witnesses and victims will be greatly helped by the assistance of an advocate.(Sabrina, 2019)

The process of applying or requesting the Witness and Victim Protection Agency (LPKS) is as follows, which will be clarified by reading

- 1 The applicant submits a written request to LPSK addressed to the Chairperson of LPSK.
- 2 LPSK verifies the completeness of the requirements.
- 3 LPSK notifies the applicant to complete the application requirements in case they are incomplete.
- 4 If the applicant is not eligible, the application will be sent to the LPSK Leadership Court (SMPL) for a decision (rejected or forwarded to the review stage).
- 5 LPSK issues a Notice of Commencement of Application Review (SPDPP), which is issued in the event that the SMPL states that the application proceeds to the review stage to the applicant.
- 6 If the results of the review are still inadequate, the Head of LPSK may decide to extend the review time.
- 7 Once the review is complete, the minutes of the protection request are submitted to the SMPL, who will then decide to approve or reject the request.(Sururiyah, 2024)

The Effect of Protection Provided by LPSK to Victims for Law Enforcement

The main goal of LPSK in the first five years is to strengthen and develop the institution. This main objective of institutional development is an important task that will impact the growth and progress of LPSK in the future. LPSK has been providing protection to victims and witnesses for approximately six years. This is evidenced by the number of requests that continue to increase each year-74 requests in 2009, 154 requests in 2010, 340 requests in 2011, 655 requests in 2012, 1,560 requests in 2013, and 1,878 requests in 2014. Following the enactment of Law No. 31/2014 on the Amendment to Law No. 13/2006 on Witness and Victim Protection, LPSK began its program in 2015 with several changes. Medium- and long-term development goals, the creation of various rules and regulations, standard procedures modified to comply with legal provisions, and institutional arrangements in the new organizational structure were the first modifications made by LPSK.(Julianto, 2020)

LPSK cooperates with other relevant institutions or agencies in carrying out its obligations to protect witnesses and victims. This is done because a multi-agency approach will resolve witness and victim protection issues in an efficient manner. Therefore, it is important for the LPSK to obtain support from relevant organizations or agencies, investigate the functions to be performed by these organizations, and identify issues that may arise from inter-agency cooperation.(Tuage, 2019)

LPSK must also synergize with several other institutions such as:

- 1 Police, who serve as investigators with protected witnesses and are tasked with supporting security and safeguards in terms of protection.
- 2 As the public prosecutor whose witnesses are protected, the Public Prosecution Service is responsible for providing administrative support for lawsuit extensions for witnesses who

- report cases of intimidation. The Public Prosecution Service also provides support for information from court outcomes, verdicts, or acquittals of perpetrators.
- 3 Courts, offering protection assistance during court proceedings, including rearranging the courtroom and preparing for closed sessions. Courts, offer assistance with information regarding court decisions.
 - 4 The Ministry of Home Affairs, among others, offered assistance to change civil registration status.
 - 5 The Ministry of Health, which offers assistance for medical and psychosocial therapy and medical record modification, among others.
 - 6 The Department of Justice and Human Rights, which offers assistance for specialized detention in prisons, sentencing of detainees, and witness protection while they are in prison.
 - 7 The Department of Education, which offers assistance with modifications to diplomas, certificates, and education administration. The Department of Education also offers assistance to establish schools for witnesses or witnesses' families who have to migrate.
 - 8 Commissions with special expertise: KPK, Komnas HAM, PPATK, BNN, etc. Their responsibility is to support beneficiaries whose witnesses are protected, as well as the administration (an extension party for witnesses reporting situations of intimidation), and to maintain existing protections under their authority.
 - 9 Heads of local governments, who offer assistance with relocation access and administrative conveniences in their jurisdictions.
 - 10 Department of Labor, which offers assistance with witness employment and labor transfers. (Bill Clinton P. Simanjorang, 2020)

The lack of public awareness, especially in the regions, about the existence of LPSK as an institution tasked with protecting witnesses and victims, makes LPSK's influence in protecting witnesses and victims not optimal. The number of victims and witnesses who do not know the stages of obtaining protection, the lack of LPSK offices in the regions which slows down the provision of protection services to victims and witnesses, the lack of cooperation between law enforcement agencies in terms of witness and victim protection, and the limited responsibilities and authority of the LPSK in Law No. 13/2006 on Witness and Victim Protection. The best way to shape LPSK's future role in protecting victims and witnesses is to draft and submit proposals to the House of Representatives related to the drafting and interpretation of the Witness and Victim Protection Law. In addition, LPSK also seeks to improve cooperation and coordination with law enforcement, other government agencies, community organizations, the private sector, and the public in order to protect victims and witnesses and gather information from them. The culture in question is the socialization of LPSK's existence, especially in terms of victim and witness protection, to ensure public trust in the guarantee of protection of victims and witnesses from intimidation and threats. (Rauf et al., 2022)

CONCLUSIONS

Law No. 13/2006 Article 29 contains regulations regarding the process of providing witness and victim protection. LPSK Regulation No. 6/2010 on Procedures for Providing Witness and Victim Protection also contains these arrangements. Witnesses and victims must submit an application and fulfill the conditions determined by the LPSK before they can receive protection. The types of protection that LPSK can provide to witnesses and victims of criminal acts are in accordance with the provisions of Article 5, Article 6, Article 7, Article 9, and Article 10 of Law No. 13/2006 on Witness and Victim Protection.

In addition, there is a process where the applicant submits a request to LPSK, which will then be checked whether the requirements are complete or not. If it is incomplete, LPSK will notify the applicant to complete the requirements, and if it is incomplete, the application

will be sent to the LPSK Leadership Session to be decided (rejected or forwarded to the review stage). Finally, LPSK sends a Notice of Commencement of Review of Application (SPDPP) to the applicant. The review can be extended according to the decision if it is still insufficient. After the evaluation is completed, the LPSK Chairperson will send the minutes of the protection request to the SMPL to decide whether the protection request is approved or rejected.

The lack of public awareness, especially in the regions, about the existence of LPSK as an institution tasked with protecting witnesses and victims has not maximized LPSK's influence in protecting witnesses and victims. LPSK should further improve synergy and cooperation with law enforcement officials, relevant government agencies, mass organizations, the private sector, and the community both in the protection of witnesses and victims and in obtaining information from witnesses and victims. There are still many witnesses and victims who do not know the procedures for requesting protection, the lack of establishment of LPSK offices in the regions which slows down the process of witness and victim protection services, and the lack of cooperation between law enforcement agencies in terms of witness and victim protection.

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