

THE ROLE OF WITNESS AND VICTIM PROTECTION AGENCIES IN PROTECTING WITNESSES OF MURDER (Study of Medan District Court Decision Number 834/Pid.B/2023/PN Mdn)

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ABSTRACT

The existence of Witnesses and Victims is very important in disclosing criminal acts in the criminal justice process. Therefore, Witnesses and Victims are given protection at all stages of the criminal justice process. Provisions regarding protected legal subjects in Law Number 31 of 2014 concerning Witness and Victim Protection. The conclusion of the discussion is that the regulation of legal protection for witnesses and victims in protecting witnesses of murder crimes is regulated in Law No. 31 of 2014. The responsibility of LPSK must protect witnesses and victims from threats, in addition to regulating the authority and responsibility. The judge's legal considerations in the Medan District Court decision Number 834 / Pid.B / 2023 / PN Mdn regarding the importance of LPSK accompanying victims in the trial process is to provide more comprehensive, just and humane protection for victims and their families in accordance with the authority inherent in him in the manner and pattern regulated in the capacity of authority in providing assistance to the victim's family and making relevant calculations.

1. Introduction

The rule of law is the ideal and goal of modern state life. According to M. Yamin, the concept of the Indonesian rule of law existed thousands of years before the Proclamation of Independence of the Republic of Indonesia in 1945, which became the written source of law in the Republic of Indonesia. Before the amendments, the concept of the rule of law was not explicitly formulated; the explanation of the 1945 Constitution stated that Indonesia is a state based on law (*rechtstaat*) and not a state based on power (*machtstaat*).

After the third amendment to the 1945 Constitution, the rule of law was clearly stated in Article 1 paragraph (3), stating that Indonesia is a state based on law. As stated by Friedrich Julius Stahl, a Continental European legal expert, the characteristics of a rule of law are: the protection of human rights, the separation or division of state powers to guarantee human rights, commonly known as the *Trias Politica* (*trias politica*), government based on regulations, and the existence of administrative justice in disputes.



As a rule of law, the administration of a state and the protection of human rights must be based on law. This situation has led to laws and regulations playing a highly strategic role as the foundation and strategy for the state to achieve its goals as mandated in Paragraph IV of the 1945 Constitution of the Republic of Indonesia.

The affirmation of Indonesia as a state of law does not mean merely a state with a formal set of laws, but rather a state that bases every action, both by the government and its citizens, on the law. As a state of law, Indonesia has an obligation to protect all its citizens according to a civilized society that upholds legal norms. This obligation is carried out by the government in a broad sense (executive, legislative, and judicial). The ideals of law itself, both institutionalized through the concept of democracy (democracy) and realized through the concept of the rule of law (nomocracy), are intended to improve the general welfare.

A closer look at the description of the rule of law mentioned above reveals a clear link between law and human rights. The recognition and protection of human rights are a key priority for the state in protecting its citizens.

One of the most fundamental human rights is the right to feel safe from dangers that threaten one's safety. This right is the most fundamental and must be guaranteed and protected by law. This allows people to feel safe carrying out their obligations without fear. Once this right is achieved, people will feel that their dignity as human beings is respected. This allows them to more freely carry out their obligations as citizens, especially in upholding the law.

Every human being, from birth, possesses fundamental rights and obligations. The formation of a state and the exercise of power within it must not diminish the meaning or significance of these freedoms and fundamental human rights. Therefore, the protection and respect for human rights are crucial pillars of any state, defined as a state based on the rule of law.

The position of victims in the current criminal justice system is not fairly recognized and tends to be overlooked. This situation has two fundamental implications: the lack of legal protection for victims and the absence of judicial decisions that satisfy the sense of justice for victims, perpetrators, and the wider community. The lack of legal protection, as an implication of the unfair placement of victims in the criminal justice system, can be examined through the existing criminal law regulations, including substantive law, formal law, and implementing (criminal) law. Similarly, empirical observations in law enforcement practices within the criminal justice subsystems show that victims also do not appear to receive legal protection.

Several rights are granted to witnesses and victims, including the right to choose and determine the form of protection and security, the right to receive legal





advice, the right to provide information without pressure, the right to obtain a new identity and residence, and the right to receive reimbursement for transportation costs as needed.

Law enforcement efforts to seek and establish clarity regarding criminal acts committed by perpetrators often face difficulties due to the inability to present witnesses and/or victims due to threats, both physical and psychological, from certain parties. Therefore, legal protection is necessary for witnesses and/or victims, whose presence is crucial in the criminal justice process to facilitate judges in making fair and beneficial decisions.

Witness and victim protection in the criminal justice process in Indonesia has not been specifically regulated. Articles 50 to 68 of Law No. 8 of 1981 concerning Criminal Procedure only regulate the protection of suspects or defendants from various potential human rights violations. Therefore, it is time for the protection of witnesses and victims to be regulated by separate legislation.

This institution is considered crucial because the wider public believes that witnesses and victims are due protection within the justice system. The role of witnesses and victims in every criminal trial is crucial because witness testimony can often influence and determine the judge's decision. Some protection is provided to witnesses and victims in serious cases, where this protection then contributes to upholding the law and achieving justice. The presence of LPSK is still considered not optimal, because many things have not been specifically regulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims which become obstacles for LPSK in carrying out its duties and authorities after being implemented in the criminal justice system. The Witness and Victim Protection Law only regulates the responsibilities of LPSK, LPSK membership and selection process, and decision-making and funding but does not regulate specifically regarding the organization and institutional support, administration, human resources, supervision, as well as transparency and accountability of LPSK.

2. Research Method

This study employed a qualitative research method that does not require a population or sample. This research is descriptive and analytical in nature, revealing laws and regulations related to the legal theories that are the object of the study. Descriptive analysis is a method used to describe a condition or situation that is currently occurring or ongoing. The goal is to provide the most accurate data possible regarding the research object, thus exploring ideal aspects, which are then analyzed based on legal theory or applicable laws and regulations.





The type of research used in this study is normative legal research. This research utilizes literature or secondary data, including books and legal norms contained in laws and regulations, legal principles, legal rules, and legal systems. It also examines statutory provisions, court decisions, and other legal materials relevant to the research formulation.

The data collection tools used in this research included document studies to obtain theoretical or doctrinal concepts, opinions or conceptual thinking, and preliminary research related to the research object. These include legislation and scientific works, as well as cases resulting from legally binding court decisions.

Obtaining secondary data requires a documentary study, namely by examining regulations, theories, and other documents related to the role of the Witness and Victim Protection Agency in protecting witnesses to murder crimes.

3. Research Results And Discussion

An unlawful act that is detrimental to society is not necessarily a crime until it is clearly prohibited or criminally regulated (Article 1 of the Criminal Code) that imposes penalties on the perpetrator. Many unlawful acts that are detrimental to society only fall within the purview of criminal law if they are prohibited by criminal regulations and the perpetrator is subject to punishment.

Whether an act is a crime or not must be determined by the provisions of applicable criminal law (positive criminal law). In the current Criminal Code, these crimes are divided into two groups: crimes regulated in Book Two and violations regulated in Book Three. The Criminal Code itself does not provide any explanation of the criteria used to classify these two types of crimes, leading people to assume that crimes are serious acts or crimes, and violations are less serious acts or crimes.

An act committed intentionally to take the life of another person is a crime of murder under Article 338 of the Criminal Code. This act can include hitting, shooting, poisoning, stabbing, and so on. Therefore, as long as the act is done intentionally and with the aim of taking the life of another person, it constitutes murder. Any act committed intentionally to cause the death of another person is murder. However, in this context, it must be understood that to determine whether an intentional act can produce a prohibited consequence, the principle of causality must be understood.

The principle of causality aims to determine the relationship between cause and effect, meaning that the effect can be determined by the cause. This teaching determines a person's criminal responsibility. According to the individual theory, the way to find the cause of an effect is after the effect has occurred, then look for





or seek out concrete problems. This means that from a series of concrete actions, an action or problem is sought that can be considered a cause of an effect.

Compared to the crime of doodslag (ordinary murder), moord (aggravated murder/premeditated murder), the crime of moord has the same elements as doodslag (ordinary murder), except that moord has other elements, namely premeditation.

Factors that lead to an aggravated sentence are when the formulation of an offense contains elements of a principal offense, coupled with other elements that could increase the potential penalty.

The crime of murder under Indonesian law is generally regulated in the Indonesian Criminal Code. The regulation of the crime of murder in the Indonesian Criminal Code is found in Chapter XIX, which discusses crimes against life. In this chapter, crimes against life are regulated by Articles 338 to 350 of the Indonesian Criminal Code. Crimes against life are regulated according to the actions committed by the perpetrator of the murder.

Witness protection is the granting of a set of rights that witnesses can exercise in the criminal justice process, implemented by the Witness and Victim Protection Agency. Legal protection for witnesses is a legal guarantee designed to provide a sense of security for witnesses when providing testimony in criminal justice proceedings, ensuring that their safety and interests are not compromised while acting as witnesses. The Witness and Victim Protection Agency (LPSK) is the agency tasked with and authorized to provide protection and other rights to witnesses and/or victims, as stipulated in the law. (Article 1, number 5, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection).

Protection for victims or witnesses can be provided during the investigation, inquiry, prosecution, and/or court hearing stages, at the initiative of law enforcement officers, security personnel, or upon a request from the victim. With legal protection from the LPSK, the guarantee of a sense of security for witnesses and victims is further strengthened. The importance of legal protection for every member of society is one of the reasons for the enactment of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, which was enacted on October 17, 2014. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims also stipulates an institution responsible for providing protection and assistance to witnesses and victims, called the Witness and Victim Protection Agency (LPSK).

This institution is considered crucial because the wider public believes that it is time for witnesses and victims to be provided with protection within the justice





system. The role of witnesses and victims in every criminal trial is crucial, as witness testimony can often influence and determine the judge's decision.

As an institution primarily tasked with providing protection for witnesses and victims, the LPSK has demonstrated a track record, which, while still small, has earned praise from various parties. Several protections are provided to witnesses and victims in serious cases, where this protection contributes to upholding the law and achieving justice.

Justice is a requirement of public service, where every activity must be acceptable, measurable, and accountable. It is part of fulfilling the basic and constitutional rights of the community, upholding human rights in a measurable and accountable manner.

The Witness and Victim Protection Agency, in accordance with Law Number 13 of 2006 concerning Witness and Victim Protection, is responsible for providing protection and assistance to witnesses and victims. According to the Decree of the Head of the Witness and Victim Protection Agency Number: KEP-037/1/LPSK/12/2009 concerning the Establishment of the Application Receiving Unit, the Witness and Victim Protection Agency deems it necessary to formulate regulations regarding Guidelines for Witness and Victim Protection Application Services in carrying out its application acceptance function.

Witness protection is essential. Numerous incidents in recent years have exemplified the critical importance of witnesses in uncovering crimes. Given the crucial role of witnesses in uncovering crimes, it is time for witnesses and informants to receive legal, physical, and psychological protection.

Essential to legal protection for witnesses is ensuring their freedom from external pressure that might intimidate them regarding their testimony in a criminal case. By knowingly and voluntarily agreeing to be a witness in a case and daring to tell the truth without fear, they have complied with and fulfilled their obligations as good, law-abiding citizens. There are four types of witnesses presented in court: witnesses presented by the suspect or defendant, who are expected to provide testimony favorable to them (also known as "Witness A De Charge" in French); witnesses presented by the public prosecutor, who are witnesses whose testimony incriminates the defendant; and witnesses who "De Auditui" (witnesses who neither witnessed nor experienced the case themselves but only heard it from others). These witnesses are usually requested by the judge and public prosecutor to seek an expert to reveal the truth in their respective fields of expertise. These witnesses are impartial and solely responsible for providing testimony in accordance with their profession. This type of witness is called an expert witness.

The existence of the Witness and Victim Protection Agency, as an agency responsible for protecting witnesses and victims, provides a breath of fresh air for





those who have been victims of human rights violations or victims of crime. The Witness and Victim Protection Agency (LPSK) is a crucial actor, part of the government's function in ensuring the disclosure of the truth and upholding justice for witnesses and victims in the Indonesian criminal justice system. As a manifestation of the legal relationship with state power, a state institution was established based on Law Number 13 of 2006 concerning the Witness and Victim Protection Agency (LPSK). The LPSK's Vision is "to realize the protection of witnesses and victims in the criminal justice system." The LPSK's Vision is then developed into a Mission, which consists of several elements: realizing the protection and fulfillment of the rights of witnesses and victims in criminal justice, and establishing a professional institution in providing protection and fulfillment of the rights of witnesses and victims.

The function of the Witness and Victim Protection Agency (LPSK) is to provide protection for witnesses and victims in criminal justice in Indonesia. To reach communities throughout Indonesia, the LPSK has established LPSK representatives in various regions of Indonesia, including North Sumatra.

The presence of the Witness and Victim Protection Agency (LPSK) representative office in North Sumatra, located at the State Finance Building, Medan GKN II, 6th Floor, Jalan Diponegoro No. 30 A, Medan City, is expected to provide protection and justice for the people of North Sumatra.

The public must have legal certainty, and the LPSK can work together to serve those in need, especially witnesses and victims. The public should be brave enough to report if they are witnesses or victims so they can get assistance, support and protection from the LPSK.

4. Conclusion

The legal protection provisions for witnesses and victims in cases of murder are regulated in Law No. 31 of 2014, amending Law No. 13 of 2006. The Witness and Victim Protection Agency (LPSK) is responsible for protecting witnesses and victims from threats. It also regulates their authority and responsibilities. The Law on Witness and Victim Protection also outlines the requirements and procedures for providing protection and assistance.

The mechanism for protecting witnesses and victims in cases of murder requires that witnesses and/or victims submit an application that meets the requirements set by the LPSK. The witness and/or victim, either on their own initiative or at the request of an authorized official, submit a written application to the Witness and Victim Protection Agency. The LPSK then examines the application, and the





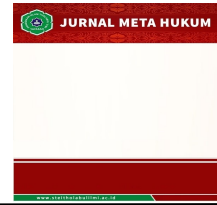
LPSK's decision is delivered in writing no later than seven days after the application is submitted.

The judge's legal consideration in the Medan District Court decision Number 834/Pid.B/2023/PN Mdn regarding the importance of LPSK accompanying victims in the trial process is to provide more comprehensive, just and humane protection to victims and their families. The author agrees with the panel of judges' decision to sentence the defendant to pay restitution money given to the victim or his family by the perpetrator of the crime or a third party to the victim's family in the amount of Rp. 253,000,000.00 (two hundred and fifty-three million rupiah). The imposition of additional penalties in terms of restitution that must be paid by the defendant to the victim's family is to fulfill the sense of justice for the victim's family.

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