

LEGAL PROTECTION FOR WITNESSES FOR CRIMINAL MURDER

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ABSTRACT

Crimes are revealed at this time, where most are not separated from the participation of the community in providing reports of alleged violations of the law and efforts to help the task of law enforcement officials reveal the existence of a criminal act such as murder, this crime will not be revealed if there is no participation the public in this case as a witness. To uncover the crime that takes the life of another person is the obligation of law enforcement officers, but the community's contribution is very important especially as someone who sees, hears or experiences the crime. The importance of security guarantees and protections which can be clearly felt by a witness is intended so that people do not feel afraid to reveal a crime. With this guarantee the criminal justice process can proceed according to its function and purpose, namely to seek material truth. By achieving material truth, the ultimate goal of criminal procedural law will also be achieved, namely to achieve order, peace, justice and prosperity in society.

Keywords: Legal Protection, Witnesses, Criminal Acts, Murder

INTRODUCTION

The State of Indonesia is a state based on law (*rechtstaat*) not on mere authority (*machstaat*). Other principles that relate to the main principles above and one that is important is that in the rule of law all people are equal before the law without differences based on race, religion, social position and wealth. To regulate relations between its citizens so that conflicts between interests do not occur, a rule or law is needed in Indonesia to ensure legal certainty for every Indonesian citizen

Humans as God's creatures carry a number of basic rights called Human Rights. Fundamental rights, of course, are rights to life, physical integrity (the right to security), and freedom. These three rights are basically basic rights that cannot be eliminated and reduced from every human being under any circumstances and by anyone.

The right to personal security is one of the rights possessed by witnesses and victims in Law Number 13 of 2006 concerning Amendment to Law Number 31 of 2014 (hereinafter referred to as the Law on Witness and Victim Protection). The role of witnesses in every criminal trial is very important because often witnesses' information can influence and determine the tendency of judges' decisions. A witness is considered to have the ability to determine the direction of the judge's decision. Giving effect to every witness testimony always receives great attention both by legal actors involved in the trial and by the public observers of the law, witnesses should be given legal protection because in uncovering a criminal act the witness consciously takes risks in revealing material truth.

The success of a criminal justice process depends very much on the evidence presented at the trial. It is stated in Article 183 of the Criminal Procedure Code which in essence explains that the judge in imposing a crime on a defendant must be based on a minimum of two valid evidences and the judge's conviction is based on the valid evidence. Article 183 of the Criminal Procedure Code above it is clear that the witness is one of the main keys in the trial process, especially as a basis for making decisions on a case and in determining the final outcome of a case.

Attention to witnesses is still far from the attention of the public and law enforcement officers. The main problem, due to the lack of adequate guarantees for certain protections and mechanisms for witnessing, is often even the fact that witnesses who eventually become suspects or are convicted because they are considered defamatory by those suspected of committing criminal offenses. With a guarantee of security that is far from what is expected to make someone unwilling to be a witness and ultimately hinder the criminal justice process.

A dilemma arises for witnesses at this time, on the one hand they must fulfill their obligations, but on the other hand their rights are not fulfilled and even harmed by the interest in the examination in every criminal justice process. The loss suffered by the witness is a right that is violated by a law. Such a situation is not uncommon for witnesses to object to providing information or testimony about the existence of a criminal act in the criminal justice process.

The importance of security guarantees and protections which can be clearly felt by a witness is intended so that people do not feel afraid to reveal a crime. With this guarantee the criminal justice process can proceed according to its function and purpose, namely to seek material truth. By achieving material truth, the ultimate goal of criminal procedural law will also be achieved, namely to achieve order, peace, justice and prosperity in society.

Being a witness is an obligation of every citizen with the principle that every witness in providing information must have freedom without coercion from anyone. However, if the witness is free to give his statement, the witness can also be prosecuted based on Article 242 of the Criminal Law Code, if the witness gives information that is not in accordance with the truth. But witnesses must also be freed from feelings of fear, worrying about the impact of the information they provide. A person may refuse to testify, or even if he is forced to lie because he does not want to preserve his life or the lives of his family because of his statements which incriminate the defendant. A person can refuse to give information because he experienced severe trauma due to a criminal event

so he does not have the ability to retell the event he experienced. Not a few cases that can not be brought before the court or stopped in the middle of the road because of this one problem. Cases such as corruption, or narcotics crimes involving a syndicate or cases of gender based violence are examples of cases that often cannot be processed because there are no witnesses who are willing and brave to provide true information. So what happens next is not only the failure of a demand for a clean, honest and authoritative judicial process to fulfill a sense of justice, but also the violation of the individual human rights involved in the case.

Seeing that the role of witnesses is so important, then they should get intensive protection. The protection of witnesses and victims is very important in the criminal justice process, this is in line with the legal principles contained in the constitution where every citizen is equal before the law. In order to provide guarantees of protection and legal certainty to guarantee a good criminal justice process, and create a fair and clean justice that can cause a sense of justice in the community so that the protection of witnesses and victims has an important role in the criminal justice process, then it is expected with witness statements and victims who are given free from fear and threats can expose a crime.

THE ROLE OF THE WITNESS AND VICTIM PROTECTION AGENCY

Law Number 31 of 2014 concerning Witness and Victim Protection Institutions is an independent institution. Independent is an idealized state organ that is independent and therefore outside the executive, legislative and judicial branches of power, but has a mixed function between the three branches of power.

The witness and victim protection institution is an independent institution, so it does not place the witness and victim protection institution under any government agency (executive) or other state institutions. From a financial standpoint this institution is fully supported by state finances. The choice of law against this institutional model certainly resembles various existing state institutions such as the National Human Rights Commission, the KPK, PPATK and so forth. What is considered by the drafters of the law to establish the model of this institution. From the various documents available, the decision to choose the model of this institution is related to several arguments.

1. The desire to create an institution that deals specifically with witness and victim protection issues that are not under existing institutions, namely the police or prosecutors, the National Commission on Human Rights or the Department of Law and Human Rights
2. Because other agencies already have a large responsibility load, therefore do not let protection programs overburden these institutions.

Law No. 31 of 2014 in its general provisions has stated that witness and victim protection institutions, hereinafter abbreviated as LPSK, are institutions that have the duty and authority to provide protection and other rights to witnesses and / or victims as regulated in the law. Law Number 31 of 2014 witness and victim protection does not specify the duties and authority of the LPSK further, the formulator does not appear to spell out the duties and authorities of the LPSK in a separate section or chapter in Law Number 31 of 2014 in the case of other regulations, but instead disseminates it in all laws. The duties and authorities of the LPSK which are the most contested in Law Number 31 of 2014 are:

- a. Receive requests from witnesses and / or victims for protection
- b. Give the decision to provide witness and or victim protection
- c. Provide protection to witnesses and victims
- d. Stop the witness and or victim protection program
- e. Submitting to court (based on the wishes of the victim) in the form of the right to compensation in cases of gross human rights violations, and the right to restitution or compensation which is the responsibility of the perpetrators of crime
- f. Receive written requests from victims or people who represent victims for assistance.
- g. Determine the appropriateness of the time period and the amount of costs required to provide assistance to witnesses and / or victims
- h. Collaborate with relevant agencies authorized to carry out the provision of protection and assistance.

Law Number 31 Year 2014 confirms that the LPSK is responsible to the president. The implication of this is that the president as the highest state official is responsible for the work of the LPSK and therefore the president must facilitate this institution in accordance with its mandate and duties. Do not let this institution be left as an institution that is ostracized and not supported by the president. In addition, the PSK Law assigns LPSK to make periodic reports on the implementation of LPSK's duties to the House of Representatives at least once a year. This assignment is a function of DPR's control as a representative of the Indonesian people. However, it should be noted what content and format should be reported to the Parliament and the president. Because these reports should not disclose information that has been designated as confidential by LPSK and oversight of performance, the DPR should also be a partner of the LPSK as both supporting the LPSK program and providing recommendations that can help the development of the LPSK program itself.

Form of Legal Protection Against Witnesses in Murder Crimes

Form of threat and protection

a. The forms of threats experienced by witnesses who receive protection include:

1. Practically afraid of anxiety over the statement of information that has been made
2. Experienced intimidation indirectly from other parties or reported to withdraw the report
3. Directly or indirectly get terror / disturbance both physically, property, and work.

4. Will be reported back by the reported party or other parties
5. Followed / monitored / scouted by reported parties or other parties related to the report
6. Threatened indirectly which can endanger lives
7. Forced either directly or indirectly to do or not do something
8. Threatened directly can endanger lives and property
9. Getting physical interference that can endanger lives and property

b. The forms of protection that can be given to witnesses are:

1. Physical protection includes supervision and escort, provision of security equipment for the body, provision of medical and psychological services, reimbursement of living costs during the protection period, reimbursement of transportation and accommodation costs while in protection, protection in a safe house, relocation and new identity.
2. Legal protection includes receiving information on case developments or court decisions related to witness reports provided that it does not conflict with internal regulations and legislation, obtaining legal advice.

Disclosure of what actually happens in a crime or violation of human rights is an inseparable part of a case resolution process. One important element needed to reveal the truth is the willingness of witnesses or victims to provide true testimony in criminal and human rights courts, but due to the lack of guarantees and protection mechanisms for witnesses and victims, witnesses and victims are reluctant to testify so that the process of resolving cases is hampered. When a crime or human rights violation occurs, there are three things that must be considered in the interests of the victim's witness, namely the victim's right to recovery, truth and justice which must be the basis in the process of resolving the case. First the witness and victim are entitled to a sense of security, privacy and self-respect. It is in their interest to witness the perpetrators of the crime, to take responsibility for their actions.

Witness and victim protection aim to provide a sense of security for witnesses and victims in providing information in every criminal justice process. The protection given to witnesses and victims is certainly based on the principles that are in accordance with the witness and victim protection laws, namely:

1. Appreciation for human dignity
2. A sense of security
3. Justice
4. Non-discriminatory
5. Legal certainty

These principles must be able to be reflected and can be adopted in the contents of the articles of the witness and victim protection law, these principles must be upheld or obeyed. The nature of these principles rewards human dignity and dignity because witnesses and victims also have dignity and dignity that must be protected and respected.

In principle, the protection of the rights of a person as a witness has been accommodated in the Criminal Procedure Code, but given the increasingly diverse types of criminal acts and the effects or consequences for the safety of the life of the witness / victim or his family, so there are special things that are regulated.

Special protection for witnesses or reporters is given by the state to overcome the possibility of a very large threat. Witnesses reporting criminal acts need special protection because not all of them face threats. Special protection according to Law Number 31 of 2014 concerning the Protection of witnesses and victims is contained in Article 5. This special protection also includes protection of the assets of the reporter and even his family.

OBSTACLES TO LEGAL PROTECTION FOR WITNESSES

The obstacles that have been upheld in the implementation of legal protection for witnesses are:

1. The strength of the witness and victim protection institutions is not yet full (Capacity Building)

Capacity building is a process to increase the ability of individuals, groups, organizations, communities or communities to analyze their environment, identify problems, needs, issues and opportunities to formulate strategies for overcoming problems, issues and needs and take advantage of relevant opportunities. Design an action and collect and use effectively and on the basis of ongoing resources to implement, monitor and evaluate, the action plan, and to use feedback as a lesson. The capacity building of witness and victim protection institutions does not yet have full strength, because capacity building does not only relate to office administration and staffing matters but includes a model of protection that will be given to witnesses and victims. Such is the cooperation that is intertwined in providing protection.

2. Cooperation between LPSK and other related institutions has not yet been established.

Witness and victim protection agencies collaborate with other relevant institutions, if necessary, with universities to uncover very serious cases such as drugs, corruption cases, trafficking and murder cases which are increasingly happening in the regions. LPSK cannot actually work alone, meaning that LPSK's hands are not very long to be able to provide services to provincial, district and city areas. While the condition of the community has greatly needed a legal protection program for witnesses in the criminal justice process. Only recently has LPSK begun to go down to the regions to socialize their institutions and existing programs. It is highly

expected that LPSK can open up to cooperate with other relevant institutions in providing protection or witness protection assistance. For example, lately between Polri and KPK there is often disharmony in carrying out law enforcement duties, LPSK should have participated in implementing protection for witnesses who are criminalized. As a result, many witnesses did not want to give their statements before the investigators or before the judges for fear of being discriminated. LPSK's work will not be separated from the existence of several existing law enforcement agencies. From a political perspective, this requires art and good placement in order to be able to put yourself in that position. LPSK must clearly build its institutional position between two positions of interest, namely the first interest mandated by the PSK Law as an independent institution, and having the second interest, namely to run a program that must also be supported by relevant agencies which in practice will later lead to an interrelation of authority. Obstacles in the implementation of witness and victim protection in Law Number 13 of 2006 concerning Protection of Witnesses and Victims include:

1. There is no definition of whistleblower reporter and justice collaborator (witnesses of collaborating perpetrators)
2. There is no guarantee of protection and reward or appreciation for whistleblowers and justice collaborators
3. There is no regulation regarding the protection of expert witnesses
4. Institutional provisions for witness and victim protection institutions that are still weak regarding the secretariat, organization and organizational structure of LPSK
5. There is no further regulation regarding the provisions for the formation of LPSK in the regions
6. The existence of LPSK and Law Number 13 Year 2006 is still not understood and known by law enforcement officers in the regions
7. Legal guarantees for assistance, restitution and compensation, which are currently not strong enough because the law of the event is still regulated in government regulations not at the level of the law.

Inhibiting factors for legal protection of witnesses in the law include:

1. Limited definition and status of witnesses in Law Number 31 of 2014
2. Inconsistencies of articles in Law Number 31 of 2014
3. Witness and victim protection institutions (LPSK) that do not yet have regional representation and lack of socialization
4. There is no temporary protection mechanism for witnesses in emergencies
5. Giving the duties and authority of witness and victim protection institutions
6. Disagreement between witness and victim protection institutions with related parties.
7. Internal problems of LPSK institutions

Even though there is a law on witness and victim protection, it cannot yet accommodate the wishes and implement the law as a whole because until now the witness and victim protection institutions are only available in Jakarta, so that in other areas that need protection they lack legal protection. If the murder is planned, the witness is afraid of getting threats from the perpetrator or the closest party to the perpetrator in providing information on his testimony. The police can also corner the witness so that the witness is afraid to give his statement before the trial. The problem that usually arises is the lack of budgetary and human resources so that the legal protection stipulated in the witness and victim protection law is less effective in its application.

CONCLUSION

The form of legal protection for witnesses in a crime of murder is physical protection, which includes supervision and escort, provision of security equipment for medical and psychological service providers, reimbursement of living costs during the protection period. Protection in a safe house, relocation and new identity, and legal protection, among others, in the form of receiving information on case developments or court decisions related to the testimony report provided so long as it does not conflict with internal rules and regulations and obtain legal advice. Barriers and efforts to protect the law against witnesses to murder are many people who are reluctant to become witnesses because many cases that occur after becoming witnesses actually get threats, lose their jobs, be persecuted, and until their lives are threatened, supervision from law enforcers on the incident is resulting in the perpetrator can act arbitrarily to the witness, because the testimony of the witness is very influential on the punishment that will be given to the perpetrator. Lack of community attention to supervision or attention to the surrounding environment, the lack of knowledge about the law owned by the community makes people less aware whether their rights have been implemented or not.

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