



# Witnesses and Victims in the Criminal Justice System

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## Abstract

Although Indonesia already has Law no. 13 of 2006 concerning Witness Protection and but formally, this law is still considered to be not optimal in regulating the protection of witnesses and victims because there are still deficiencies here and there. The nature of the research used is descriptive and the type of research used is normative juridical research, namely research that uses statutory regulations as the basis for solving the problems raised. The data used is secondary data and the data collection method used in this study is library research. The data analysis used is qualitative data. Regulations relating to the authority of the witness and victim protection agency (LPSK) are contained in Law no. 13 of 2006, Regulation of the Witness and Victim Protection Agency of the Republic of Indonesia Number 1 of 2011 concerning Guidelines for Protection Application Services at Witness and Victim Protection Institutions, and Government Regulation Number 44 of 2008 concerning Compensation, Restitution and Assistance to Witnesses and Victims. Before the LPSK provides its protection, witnesses and / or victims must submit a request to meet the requirements set by the LPSK, which sometimes it is hard for witnesses and victims to do so. Providing security and safety guarantees for witnesses and / or victims, can make them feel safe and comfortable so that they can testify and provide information that can help people uncover an organized crime. Witnesses and / or victims are entitled to personal protection, family and property. Witnesses and / or victims are also entitled to receive medical and psychological assistance and can apply for restitution (compensation). In addition to the above rights, witnesses and / or victims will also be accompanied by the LPSK at every examination at the Police or at court. This is done to provide a sense of security and comfort to witnesses and / or victims. So they can testify with comfort.

**Keywords:** Development of Narcotics Prisoners, Correctional Institutions, Narcotics.

## A. Introduction

Law was created to regulate the order of community life and protect all components of society. In the preamble to the Law of the Republic of Indonesia No. 8 of 1981 in point C concerning criminal procedural law, states that national development in the field of criminal procedural law is intended so that people live up to their rights and obligations as well as to improve the fostering of attitudes of law enforcers towards the certainty of running the law properly and feeling justice and protection of dignity human beings for the implementation of a rule of law in accordance with the 1945 Constitution. In constitutional science, the term rule of law (Rechtstaat) is considered to be familiar. The rule of law is the ideal and goal of modern state life. The concept of the Indonesian rule of law according to Prof. M. Yamin existed for thousands of years before the 1945 Proclamation of Independence of the Republic of Indonesia, which became the source of written law in the Republic of Indonesia. In the 1945 Constitution before the amendment was not explicitly formulated, the

concept of a rule of law was included in the explanation of the 1945 Constitution which stated that Indonesia was a constitutional state (*rechtstaat*) and not a power state (*machtstaat*).<sup>1</sup>

After the amendment or third amendment of the 1945 Constitution, the rule of law is clearly attached in Article 1 paragraph (3) that the State of Indonesia is a constitutional state. As stated by Friedrich Julius Stahl from among the legal experts of Continental Europe gives the characteristics of *Rechtstaat*, namely, the protection of human rights, separation or division of state power to guarantee human rights which is commonly known as *Trias Politica*, government based on regulations, the existence of administrative justice in a dispute. As a rule of law, to run a country and protect human rights must be based on law.<sup>2</sup>

The affirmation of Indonesia as a rule of law does not mean only as a country that has a set of formal laws, but a state that bases every action, both the government and its people, is based on law. As a rule of law, the Indonesian state has an obligation to protect all its citizens according to the order of civilized society that upholds legal norms. This state obligation is carried out by the government in a broad sense (executive, legislative and judicial).

The ideals of law itself, whether institutionalized through the idea of a democratic state (*democracy*) or embodied through the idea of a constitutional state (*nomocracy*) are intended to improve the general welfare. When we look closely at the description of the rule of law above, it can be seen that there is a link between law and human rights. Recognition and protection of human rights is of greater concern to the state in protecting its people.

One of the most basic rights for humans is the right to feel safe from dangers that threaten their safety. This right is the most basic right that must be guaranteed and protected by law. Thus, they feel safe carrying out their obligations without being overwhelmed by fear. If this right has been obtained, the community will feel that their dignity as a human being is respected. Thus they will more freely carry out their obligations as citizens, especially for the sake of upholding the law. The success of law enforcement in a country will be determined by the legal awareness of the community itself, which means that people voluntarily obey the law.<sup>3</sup>

Since birth, every human being has rights and obligations that are free and basic. The formation of a state and likewise the exercise of power in a state must not diminish the meaning or meaning of freedom and human rights. Therefore, the existence of protection and respect for human rights is a very important pillar in any country known as the rule of law.<sup>4</sup>

Human rights are often defined as rights which are inherent in human nature, so that without them we cannot have human dignity and because of that it is said that these rights are inalienable and cannot be violated. In the preamble to the UDHR, there

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<sup>1</sup>Muhammad Yamin, *Proklamasi dan Konstitusi Republik Indonesia*, Ghalia, Jakarta, 1992, hal. 72

<sup>2</sup>Teguh Prasetyo, *Kriminalisasi Dalam Hukum Pidana*, Nusa Media, Bandung, 2011, hal.

<sup>3</sup>Tim Fakultas Hukum Universitas Bhayangkara Jakarta, *Mewujudkan Perlindungan Saksi dan Korban Dalam Sistem Peradilan Pidana Di Indonesia*, LPSK.Gedung Perintis Kemerdekaan, Jakarta, 2011, hal 2

<sup>4</sup>Ibid

is the word equal which indicates that there is no discrimination in the protection of the State or the guarantee of the State for these individual rights.<sup>5</sup>

So far, criminal justice has prioritized protecting the interests of perpetrators of criminal acts. Whereas criminal justice as an institution that has the authority to impose criminal sanctions on people who violate criminal law is often the benchmark for evaluating the character of the authorities and / or society. The state as the representative of the public, through criminal justice, has received a sharp spotlight, namely how to carry out legal proceedings against suspects / defendants, who are also members of the public.

This condition then raises concerns about the arbitrariness of law enforcement officials in exercising their authority. What was only a concern, this was later proven by the lack of news about torture practices by the authorities in order to obtain confessions from the suspect / defendant. This fact will generate sympathy for these weak parties in the form of granting the suspect / defendant a set of rights to defend himself through a fair legal process (due process of law).<sup>6</sup>

Protection of witnesses and victims in the criminal justice system is also very important in the context of upholding human rights (HAM), the existence of legal protection for human rights with legal guarantees for enforcement demands through a fair process. The protection of human rights is widely disseminated in the framework of promoting respect and protection of human rights as an important feature of a democratic rule of law. If in a country, human rights are neglected or deliberately violated and the suffering they cause cannot be dealt with fairly, then the country concerned cannot be called a rule of law in the true sense.

The position of victims in the criminal justice system (hereinafter referred to as SPP) is currently not fairly placed and tends to be forgotten. This condition has implications for two fundamental things, namely the absence of legal protection for victims and the absence of a judge's decision that fulfills a sense of justice for the victim, the perpetrator and the wider community. The absence of legal protection as an implication of the victim's not being placed fairly in the SPP, can be examined through statutory devices in the field of criminal law through material law, formal law and implementing (criminal) law. Likewise, through empirical practice in law enforcement in sub-SPP institutions, victims also do not appear to have received legal protection.<sup>7</sup> A witness and victim have the right to receive protection for their personal security from physical or psychological threats from other people, regarding the testimony they are about to give or have given for a crime. In addition, a number of rights are granted to witnesses and victims, including the right to choose and determine the form of protection and security, the right to obtain legal advice, the right to provide information without pressure, the right to obtain a new identity and place of residence, and the right to obtain reimbursement of transportation costs as needed.<sup>8</sup>

Law enforcement efforts to seek and find clarity on criminal acts committed by criminal offenders often experience difficulties because they cannot present witnesses and / or victims due to threats, both physical and psychological from certain parties.

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<sup>5</sup> Mardjono Reksodiputro, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana*, Universitas Indonesia, Jakarta, 2001, hal 7

<sup>6</sup> Harkristuti Harkrisnowo, *Urgensi Perlindungan Saksi*, FH Universitas Indonesia, Jakarta, 1999, hal 41

<sup>7</sup> Humphrey R. Djemat, *Lindungi Saksi Atau Pelapor Korupsi*, Sinar Harapan, 3 Maret 2005, hal 2

<sup>8</sup> Muladi, *Kapita Selekta Hukum Pidana*, Badan Penerbit Universitas Diponegoro, Semarang, 1995, hal.24

Therefore, it is necessary to provide legal protection for witnesses and / or victims whose existence is very important in the criminal justice process in order to facilitate judges in making fair and useful decisions.

The issue of protection of witnesses and victims in the criminal justice process is one of the issues of concern to the international community. This can be seen by discussing the issue of protection of crime victims at the VII UN Congress of 1985 concerning "The Prevention of Crime and The Treatment of Offenders" in Milan, Italy: It is stated that "Victims right should be perceived as an integral aspect of the total criminal justice system. " (Victims' rights should be an integral part of the entire criminal justice system).<sup>9</sup>

In this UN Congress, a draft Resolution on Victim Protection was submitted to the UN General Assembly. This Draft Resolution later became UN General Assembly Resolution No. 40/34 dated 29 November 1985 regarding the "Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power." Witnesses are also a major factor in proving the truth in a trial process

This is clearly illustrated in Article 184-185 of the Criminal Procedure Code which places the witness's testimony first above other evidence. This sequence refers to the evidence that is first examined in the proving stage at trial. Considering that the position of the Witness is very important in the judicial process, not only in the criminal justice process, but also in other court processes, and there is no regulation regarding this matter, a special legal instrument that regulates the protection of Witnesses is needed.

Empirical experience in Indonesia explains that the issue of protection for Witnesses and victims is a very crucial issue. The main problem is the large number of Witnesses who are not willing to become Witnesses or do not have the courage to give their true testimony because there is no adequate guarantee, especially guarantees for certain rights or certain mechanisms to testify.<sup>10</sup>The procedure for providing protection for witnesses and victims is regulated in articles 28-32 of Law no. 13 of 2006 which includes various procedures and in addition, the rights of victims in certain cases are also not granted. Witnesses' unwillingness to give testimony at trial does not only occur in human rights cases, but also occurs in cases such as cases of violence against women, cases of domestic violence (KDRT), terrorism, corruption, money laundering and children. become a weak point in solving various cases handled by the police, until finally at the court stage the same thing happens,

Law No. 13 of 2006 concerning Protection of Witnesses and Victims was established to provide a sense of security to every witness and / or victim in providing information in every criminal court process. Protection in Law no. 13 of 2006 is defined as all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and / or victims which must be carried out by LPSK or other institutions in accordance with the provisions of this Law. Seeing the important role of witnesses and / or victims in making light of a criminal case, it is also important to provide protection for witnesses and victims.

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<sup>9</sup>UN Congress, Seventh Report, New York, 1986, hal. 147.

<sup>10</sup> Supriyadi Widodo Eddyono, Pemetaan Legislasi Indonesia Terkait Dengan Perlindungan Saksi dan Korban, Aneka Ilmu, Jakarta, 2005, hal 2

The procedure for providing protection for witnesses and victims is regulated in articles 28-32 of Law no. 13 of 2006, which includes various procedures and conditions that must be fulfilled by witnesses and / or victims in order to get protection from the LPSK, which is sometimes difficult for witnesses and / or victims to do. The performance of the LPSK in carrying out their duties is also seen as less effective. This is because the Witness and Victim Protection Act still has weaknesses here and there.

Witnesses and / or victims must submit a request to the LPSK so that they can get protection from the LPSK, besides they must also fulfill the requirements set by the LPSK. However, from these requirements there are several provisions that are considered difficult by witnesses and / or victims. The weakness of the Witness and Victim Protection Act is one of the causes of the decline in the performance of the LPSK in carrying out its duties and authorities.

Protection of Witnesses and Victims 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 Law only regulates the protection of suspects or defendants to receive protection from various possible violations of human rights. Therefore, it is time for the protection of Witnesses and Victims to be regulated by their own laws.

This institution is considered important, because the wider community views that it is time for witnesses and victims to be given protection in the justice system. The role of witnesses and victims in every trial of a criminal case is very important because often witness testimony can influence and determine the tendency of a judge's decision. Some protection is carried out for witnesses and victims in serious cases, where the protection then contributes to enforcing the law in order to achieve justice.<sup>11</sup>The presence of LPSK is still considered not optimal, because there are many things that have not been specifically regulated in Law no. 13 of 2006 which becomes an obstacle for LPSK in carrying out its duties and authorities after being implemented in the criminal justice system space. The Witness and Victim Protection Act only regulates the responsibilities of the LPSK, the membership and selection process of the LPSK, and decision making and funding, but does not specifically regulate the organization and institutional support, administration, human resources, supervision, and transparency and accountability of the LPSK.<sup>12</sup>

## B. Research Methods

Method is defined as a way or way to find something. As regarding how writing must be done, the legal research methods used include:

### a) Types of research

This type of research in the writing of this thesis is carried out with a normative juridical approach, namely by analyzing the problem through the approach of legal principles and referring to the legal norms contained in the legislation.<sup>13</sup>

<sup>11</sup>Rahmat, Kesaksian, Majalah Kesaksian Edisi II, 2012, hal. 3

<sup>12</sup>Mal Thes Zumara, Fungsi LPSK dalam Kasus Pelanggaran HAM Dikaitkan dengan UU No. 13 Tahun 2006 tentang Perlindungan Saksi dan Korban, Repository UNAND, diakses dari [http://repository.unand.ac.id/fungsi\\_lembaga\\_perlindungan\\_saksi\\_dan\\_korban](http://repository.unand.ac.id/fungsi_lembaga_perlindungan_saksi_dan_korban), pada tanggal 12 Mei 2017, pukul 21.00 WIB

<sup>13</sup>Soerjono Soekanto, Sri Mamudji, Penelitian Hukum Normatif, Rajawali Press, Jakarta, 2010, hal. 12



## **b) Data and Data Sources**

The data for the preparation of this thesis uses secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. The data are as follows:

- a) Primary legal materials are legal materials that already exist and are related to this thesis, namely various laws and regulations related to this research.
- b) Secondary legal materials are materials obtained to support and relate to primary legal materials consisting of draft laws, court decisions, books and opinions of scholars.
- c) Tertiary legal materials are legal materials that provide meaningful instructions or explanations for primary and secondary law such as legal dictionaries, encyclopedias and others.<sup>14</sup>

## **c) Method of collecting data**

The data collection method used in the writing of this thesis is library research (library research). In this case, the author conducts research on court decisions, literature, laws and regulations, books, magazines, and the internet which are considered relevant to the issues that will be discussed by the author in this thesis.

## **d) Data Analysis**

Secondary data that has been obtained are then analyzed qualitatively, namely writing as much as possible using existing materials based on principles, definitions and existing legal sources and drawing conclusions from these materials.

## **C. Results and Discussion**

### **1. Implementation of Witness and Victim Protection in Indonesia.**

The rights possessed by a suspect or accused as a perpetrator of a crime include, namely, the right to be immediately examined, the right to be accompanied by a legal adviser, the right to visit family and doctors, clergy, general counsel, the right to be notified of the suspicion or accusation against him and others. -other. The evidence for the testimony of witnesses is the most important means of evidence in a criminal case. There is no criminal case that escapes the proof of evidence of witness testimony. Almost all proof of criminal cases always relies on examining witness statements. At least in addition to proof with other evidence, it is still necessary to prove it with evidence from witness testimony.<sup>15</sup> In terms of the value and strength of evidence or "degree of evidence", the witness testimony so that the witness testimony or testimony has the value and strength of evidence.<sup>16</sup> The enactment of Republic of Indonesia Law No. 13 of 2006, of course, is predicted to experience normative obstacles in terms of the application of the concept of protection of cooperating person and the principle or principle of immunity, which is not to be prosecuted criminally and civil by whistleblowers. The Criminal Justice System as a system and society in the process of determining the concept of the system is a criminal justice apparatus that is tied together in the relationship between the police sub-system, courts and institutions

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<sup>14</sup>Tampil Ashari Siregar, *Metodologi Penelitian Hukum Penulisan Skripsi*, Pustaka Bangsa Press, Medan, 2006, hal. 72

<sup>15</sup>M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP*, Sinar Grafika, Jakarta, 2008, hal. 265

<sup>16</sup> *Ibid*, p. 266

(prisons).<sup>17</sup>Meanwhile, Muladi argues that the criminal justice system in accordance with the meaning and scope of the system can be physical in the sense of structural synchronization, it can also be substantial (substantial synchronization), and can also be cultural (cultural synchronization). In terms of substantial synchronization, this contains both vertical and horizontal meanings in relation to the applicable positive law, while cultural synchronization implies efforts to always live simultaneously in living up to the views, attitudes and philosophies that as a whole underlie the running of the criminal justice system.<sup>18</sup>After describing the role of the victim above, then other parties who also influence the birth of the victim and the victim maker are the parties who witness the occurrence of a deviation, the birth of the orban and the victim maker, namely the witness, the audience / observer (by stander) .<sup>19</sup>Here are some of the problems with witnesses in Indonesia. First, the issue of willingness to enter the protection program. When a person declares himself to be included in a protection program, he must agree on several standard requirements established by law. One is being willing to cut ties with everyone known if circumstances so desire. The same thing in Article 30 paragraph (2) letter c of Law no. 13 of 2006 also means that witnesses / victims who are in the protection program will be moved to a hiding place which completely cuts off ties with anyone and no one knows them, even though the nuclear family (husband / wife and children) may be included in hiding.

Termination of relations with other people includes the possibility to give the witness / orban and their immediate family a new life by changing their identity and new place of residence after testifying in front of a court session so that the perpetrator loses track of and cannot track and harm the witness / victim after he is free from his sentence. The consequences of this are enormous. Once a witness / orban declares that he is willing to enter the protection program, given the huge consequences of being willing to give testimony, even though he is included in the protection program, it is not certain that every witness / victim is willing to sacrifice his life for that much. Another problem that will be faced by LPSK is the psychological pressure felt by witnesses / victims in the protection program, especially witnesses / victims who have been cut off from other parties, including their families. Despite the possibility of including the nuclear family in the protection program, the witness / victim will still feel a great sense of loss, as well as to their immediate family. In contrast to American society, close and strong kinship exists only in the nuclear family. Thus, when the witness / victim's nuclear family is included in the protection program, there is no significant psychological problem. The third problem that could potentially complicate the witness / victim protection process is the availability of implementation costs. In the witness and victim protection law, it is stated that the LPSK budget is borne by the APBN. Normatively, there is actually no problem. LPSK already has a fixed source of funding in carrying out its duties. However, practically if we learn from the experiences of current law enforcement agencies, the funds budgeted by the government for the LPSK are also considered minimal levels. Moreover, the witness / victim protection process that will be carried out by the LPSK requires many needs to be fulfilled,

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<sup>17</sup> R. Abdussalam, DPM Sitompul, Sistem Peradilan Pidana, PTIK Press, Jakarta, 2005, hal.60

<sup>18</sup> Muladi, Op.Cit, pp. 13-14

<sup>19</sup> Arif Gosita, p. 72

especially if it turns out that circumstances require the witness.<sup>20</sup>

## **2. Strengthening the Authority of Witness and Victim Protection Institutions in the Criminal Justice System in Indonesia.**

### **a. Rights of Compensation, Restitution and Assistance to Witnesses and Victims.**

Several important points of the mechanism according to Article 2 PP No. 44 of 2008, namely:

- (1) Victims of serious human rights violations are entitled to compensation.
- (2) (2) The application for compensation as referred to in paragraph (1) shall be submitted by the victim, his family, or his proxy with a special power of attorney.
- (3) (2) Applications for compensation as referred to in paragraph (2) shall be submitted in writing in Indonesian on sufficiently stamped paper to the court through the LPSK.

Government Regulation Number 44 of 2008 also regulates the procedures for providing assistance to witnesses and / or victims. Such assistance can be in the form of medical assistance and psycho-social rehabilitation assistance. Assistance is provided by submitting a request by the victim, family or their proxy to the LPSK to obtain a determination regarding the feasibility, time period and the amount of cost required to provide assistance. The provision of assistance by the LPSK is determined by the decision of the LPSK. The provision of assistance is given based on information from doctors, psychiatrists, psychologists, hospitals and / or health / rehabilitation centers. The period for providing such assistance by LPSK can be extended or stopped after hearing the information from a doctor, psychiatrist or psychologist.

### **b. Establishment of Witness and Victim Protection Institutions in the Regions.**

Applications for protection for witnesses and victims from all regions in Indonesia to the Witness and Victim Protection Agency (LPSK) have increased significantly four years since the birth of the LPSK. Therefore, the formation of LPSK representatives in the regions is an urgent need and needs to be realized.<sup>21</sup>

Application for protection from year to year has increased rapidly. Since 2012, it has been recorded that more than 1000 applications from all provinces have submitted to LPSK. In August 2012-September 2013, LPSK received 84 applications and 154 applications in 2014. In 2015, LPSK received 340 applications and 616 applications per 2016. As of March 2017, LPSK has received 210 applications.<sup>22</sup> If this trend continues while institutional strengthening and the carrying capacity of human resources and infrastructure are hampered, the ability of LPSK to serve applicants and services will slow down. Thus, one of the accommodative steps is the

<sup>20</sup><http://varenotarnes.wordpress.com/lembaga-perlindungan-saksi-dan-korban-dilemakentuk-dan-kemampu>. accessed on 16 May 2017 at 16.00 WIB

<sup>21</sup> Abdul Haris Semendawai [http://lpsk.go.id/berita/berita\\_detail/147](http://lpsk.go.id/berita/berita_detail/147) Permohonan Perlindungan dari Daerah Meningkatkan, Pembentukan LPSK Daerah Mendesak, diakses tanggal 16 Mei 2017 Pukul 16.00 wib

<sup>22</sup> Ibid



establishment of regional LPSKs.<sup>23</sup>

There are two reasons for the formation of regional LPSK representatives. First, the vast territory of Indonesia and applications are mostly from regions so that the regional LPSK will provide fast, easy and inexpensive access for witnesses, reporters and victims. LPSK representatives in the regions also facilitate coordination with law enforcement and local governments.<sup>24</sup> Even if there has been the formation of LPSK representatives in the regions, the priority is in the seven regions that have Corruption Courts. Meanwhile, LPSK protection prioritizes witnesses and victims in certain criminal acts, namely corruption, gross human rights violations.<sup>25</sup>

The second reason is that Law 13/2006 envisages LPSK not only in the national capital but also in the regions. This is in accordance with Article 11 paragraph 3, which reads that LPSK has representatives in the regions as needed. Apart from the urgent need, the momentum of the revision of Law 13/2006 which is included in the 2013 National Legislation Program can be used as an opportunity for LPSK representatives in the regions.

**c. Strengthening the Position of the Witness and Victim Protection Agency in the Criminal Justice System.**

Law Number 13 of 2006 concerning Protection of Witnesses and Victims in its general provisions Article 1, a witness is a person who can provide information for the purposes of investigation, investigation, prosecution and examination in court regarding a criminal case which he has heard himself, and / or he experienced it himself. The law on witness and victim protection still uses the concept of the definition of witness as stipulated by the Criminal Procedure Code. The difference with the formulation of the Criminal Procedure Code is that the status of witnesses in Law Number 13 of 2006 concerning Protection of Witnesses and Victims has started at the investigation stage, while in KUHP the status of witnesses starts from the investigation stage. The definition of witnesses in Law Number 13 of 2006 concerning Protection of Witnesses and Victims is indeed more advanced, because it tries to include or (expand) the protection of people who assist in criminal investigations who have the status of complainants or complainants. Protection of the status of witnesses in the context of this investigation is still limited and inadequate because it collides with the doctrine introduced by the Criminal Procedure Code, where the witness must be a person whose statement of a criminal case he has seen, heard himself, and experienced himself. The use of this doctrine will then limit the protection of witnesses who have the status of reporters or complainants. Because in many cases there are people who have reported status, sometimes not people who hear, see, or experience the case themselves.<sup>26</sup> Apart from that, in the context of the limited definition of witnesses, this law also (not found / regulated) neglects those people who provide assistance to law enforcement officials for information

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<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Supriyadi Widodo Eddyono, Op.Cit, p. 9

and assist in the criminal examination process who are experts (people with expertise special).

It should be added that this law does not clearly regulate “witness status” with regard to which witnesses can be protected. Is it a witness who assists the suspect or defendant (a charge) or is it a witness from a party assisting law enforcement officials (a de charge). The absence of explicit mention of this will cause problems and burden the witness and victim protection agencies in its implementation. This law should have emphasized that witnesses protected in Law Number 13 of 2006 concerning Protection of Witnesses and Victims are witnesses with the status of law enforcement officers.

When the witness (victim) is about to give testimony, of course, it must be accompanied by a guarantee that the person concerned is free from fear before, during and after giving testimony. This guarantee is important to give to ensure that the information to be given is truly pure, not the result of fabrication. the result of pressure from certain parties. This is in line with the definition of a witness himself, as stated in Article 1 point 26 of the Criminal Procedure Code.

Article 5 paragraph (1) of Law Number 13 Year 2006 concerning Protection of Witnesses and Victims regulates several rights granted to witnesses and victims, which include:

- a) Receive protection for the safety of his personal, family, and property, and are free from threats related to the testimony he will, is being, or has given.
- b) Participate in the process of selecting & determining forms of security protection and support.
- c) Provides information without stress
- d) Got a translator
- e) Free from entangled questions
- f) Get information about case developments
- g) Get information about court decisions
- h) Knowing in terms of the convict being released
- i) Get a new identity
- j) Get a new residence
- k) Receive reimbursement of transportation costs as needed
- l) Get legal advice
- m) Receive temporary living expenses until the end of the protection period.

Article 5 paragraph (2) of Law Number 13 Year 2006 concerning Protection of Witnesses and Victims states that the rights referred to in paragraph 1 are given to witnesses and / or victims of criminal acts in certain cases in accordance with the decision of the Witness & Victim Protection Agency (LPSK). It is clear that based on the provisions of Article 5 paragraph (2) of Law Number 13 of 2006 concerning Protection of Witnesses and Victims, not every witness or victim who provides information (testimony) in a criminal justice process, automatically receives protection as stated in the law. this. The existence of statutory provisions regulating witnesses and victims of criminal acts, but the problem is that in Law Number 13 of 2006 concerning Protection of Witnesses and Victims which gives the task and authority to

protect the rights of witnesses and victims is the head of the witness and victim protection agency, whereas the one carrying out the investigation and examination before a court session is not witness protection agency, where this witness protection agency is outside of law enforcement agencies, such as the police, prosecutors and courts. So that in providing protection for the rights and interests of witnesses and victims will experience obstacles and obstacles. where this witness protection agency is outside of law enforcement agencies, such as the police, prosecutors and courts. So that in providing protection for the rights and interests of witnesses and victims will experience obstacles and obstacles. where this witness protection agency is outside of law enforcement agencies, such as the police, prosecutors and courts. So that in providing protection for the rights and interests of witnesses and victims will experience obstacles and obstacles.<sup>27</sup> then there is a tendency for the accused to make witnesses and victims as enemies who have incriminated him in the process of handling the case, this of course can threaten the existence of witnesses and victims. Based on this, of course a witness and victim need to get special treatment and rights, because considering the information given can threaten his safety as a witness.<sup>28</sup> Without strict regulations and guarantees of security for a witness, someone will feel afraid to become a witness. In the future, it is hoped that security and safety guarantees will be provided for a witness, so that the public can play an important role in uncovering a criminal act, such as being a witness, because without security and safety guarantees given to a witness, the public is reluctant or even unwilling to become a witness. witnesses, even though the presence of a witness in uncovering a criminal act is very important. Protection of witnesses and victims in the judicial process, especially cases of gross human rights violations, is also recognized internationally. This is reflected in the ad hoc International Court of Justice of the former Yugoslavia (International Criminal Tribunal For Former Yugoslavia) and the International Criminal Tribunal For Rwanda which explicitly mention this in the statute and technical rules of court procedure. Learning from the experience of the ad hoc International Criminal Court, the protection of witnesses and victims is included in the Rome Statute of the International Criminal Court (International Crime Court) which has been ratified by more than 60 countries. In order to give more recognition and provide better guarantees to witnesses and victims of their rights in the judicial process, the Rome Statute regulates 3 important things, namely:<sup>29</sup>

- a. Victim participation in the proceedings; The statute acknowledges that victims can contribute to the trial process and most importantly that witnesses are not placed in a passive position, but can be actively involved and provide as much information as possible as evidence in the trial.
- b. Protection of victim and witnesses;
- c. The Rome Statute of the International Crime Court acknowledges the guarantee of security protection for witnesses and victims, both physical

<sup>27</sup> Muhadar, Edi Abdullah, and Husni Thamrin, Op.Cit, p. 180

<sup>28</sup> Ibid, p. 60

<sup>29</sup> Ibid, p. 62

and mental protection as well as protection of the dignity and privacy of witnesses and victims. The guarantee of witness and victim protection is also intended to provide credibility and a legal basis for the International Crime Court, so that it will get good support from all parties including witnesses and victims.

- d. And the right to reparations. The desire to get reparations is based on the feeling of suffering both physically and mentally by the victims, so that it is appropriate for them to get reparations in order to improve their fate in the future.

A witness and victim have the right to obtain protection for their personal safety from physical or psychological threats from other people, with regard to the testimony they are about to give, being, or are, about a criminal act. In addition, a number of rights are granted to witnesses and victims, including the right to choose and determine the form of protection and security support, the right to obtain legal advice, the right to provide information without pressure, the right to obtain a new identity and place of residence, and the right to obtain compensation. transportation costs according to needs. The discussion regarding the application of the equality before the law principle in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims in the criminal justice system in Indonesia is very important considering that this principle is a fundamental principle in the criminal justice system, so that any laws and regulations regulating criminal procedural law must realize the principle of equality before the law. Law Number 13 of 2006 concerning Witness and Victim Protection provides protection and assistance to witnesses and victims. Protection in question is in the form of actions that provide shelter or protection for someone in need, so that they feel safe against threats around them. Next to the police, The implementation of witness protection is an obligation for the police in their position as the public protective apparatus, this is regulated in Article 13 letter c of the Police Law. In the investigation process, because the police are the investigators, the protection is only limited to the home address, then monitoring the house and placing the officers on guard outside the house within certain limits. This is what the police consider as a form of protection. At the Prosecutor's Office, protection of witnesses takes very simple forms, such as escorting witnesses from and to court, asking the police to place their members in the witness's house, protecting witnesses by means of legal protection. As compensation was not made a suspect. In the Criminal Procedure Code there are several articles that accommodate at least protection for witnesses, including: Article 108 paragraph (1) which states that "every person experiencing, seeing, and witnessing and / or being a victim of an incident which is a legally criminal act to submit a report or complaint to the investigator, both orally and in writing" Furthermore, Article 117 paragraph (1), apart from that in the judicial process a witness has the right to give information to investigators without pressure from anyone and / or in any form, as well as in the evidence before a court hearing a witness may not be asked questions that are ensnaring. contained in Article 166 KUHAP. Other protections are also provided to witnesses or victims in a criminal justice process, including: and witnessing and / or being a victim of an incident which constitutes a legally criminal act to submit a report or complaint to the investigator either orally or in writing ". Furthermore, Article 117 paragraph (1), apart from that in the judicial process a witness has the right to give

information to investigators without pressure from anyone and / or in any form, as well as in the evidence before a court hearing a witness may not be asked questions that are ensnaring. contained in Article 166 KUHAP. Other protections are also provided to witnesses or victims in a criminal justice process, including: and witnessing and / or being a victim of an incident which constitutes a legally criminal act to submit a report or complaint to the investigator either orally or in writing ". Furthermore, Article 117 paragraph (1), apart from that in the judicial process a witness has the right to give information to the investigator without pressure from anyone and / or in any form, as well as in the evidence before a court hearing a witness may not be asked questions that are ensnaring. contained in Article 166 KUHAP. Other protections are also provided to witnesses or victims in a criminal justice process, including: In addition, in the trial process, a witness has the right to provide information to investigators without pressure from anyone and / or in any form, and in the evidence before a court hearing a witness may not be asked questions that are entangling in nature as contained in Article 166 of the Criminal Procedure Code. Other protections are also provided to witnesses or victims in a criminal justice process, including: In addition, in the trial process, a witness has the right to provide information to investigators without pressure from anyone and / or in any form, and in the evidence before a court hearing a witness may not be asked questions that are entangling in nature as contained in Article 166 of the Criminal Procedure Code. Other protections are also provided to witnesses or victims in a criminal justice process, including:<sup>30</sup>

- a. Give testimony without being directly present at the court where the case is being investigated, of course after there is permission from the judge (Article 9 paragraph 1);
- b. Witnesses, victims and whistleblowers cannot be prosecuted by law, either criminal or civil, for reports, testimonies that they will, are being, or have given.

#### D. Conclusion

Based on the discussion stated, the following conclusions are obtained:

1. Regulations relating to the authority of the witness and victim protection agency (LPSK) are contained in Law no. 13 of 2006, Regulation of the Witness and Victim Protection Agency of the Republic of Indonesia Number 1 of 2011 concerning Service Guidelines for Protection Applications for Witness and Victim Protection Institutions, and Government Regulation Number 44 of 2008 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims. Before the LPSK provides its protection, witnesses and / or victims must submit a request to meet the requirements set by the LPSK, which sometimes it feels hard for witnesses and victims to do so.
2. Strengthening the authority of the witness and victim protection agency (LPSK) is very important, because witness testimony is very helpful in uncovering a case. By providing security and safety guarantees for witnesses and / or victims, it can create a sense of security and comfort for them so that they can testify and provide information that can help people uncover an

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<sup>30</sup> Ibid, p. 68



organized crime. Witnesses and / or victims have the right to receive protection, both personal, family and property. Witnesses and / or victims also have the right to receive medical and psychological assistance and can apply for restitution (compensation). In addition to the above rights, witnesses and / or victims will also be accompanied by the LPSK at every examination at the Police or at court. This is done to provide a sense of security and comfort to witnesses and / or victims. So they can testify with comfort.

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