



Law protection on witnesses and reporting witnesses in corruption criminal measures in Indonesia

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Abstract

The acquisition of witness rights contained in the criminal justice system, namely the existence of justice, protection, and respect for human dignity and dignity, has not been fulfilled so far. The purpose of the study is to find and analyze the Principles of Protection Arrangements for Witnesses and Reporting Witnesses in Indonesia in Current Corruption Crimes, to analyze the Weaknesses of Protection of Witnesses and Reporting Witnesses in Indonesia in Current Corruption Crimes, to reconstruct the Protection of Witnesses and Reporting Witnesses in Indonesia in Dignity-Based Corruption Justice.

Research are done using constructivism paradigm with sociological juridical law approach. Research data sources consist of primary data sources and secondary data sources, qualitative descriptive analysis.

The findings of the principle of regulating the protection of witnesses and reporting witnesses in criminal acts of corruption in Indonesia currently indicate that several cases involving alleged corruption, for example, have threatened and threatened a number of people who will be witnesses, or have provided information regarding the case. The weakness of the legal substance, that the existence of the Witness Protection Act is not limited to protecting witnesses, but rather to increase effectiveness in law enforcement, especially the resolution of cases of human rights violations and corruption cases. Weaknesses in the legal structure, that there are a number of bureaucratic processes that witnesses must go through to obtain protection. The weakness of the legal culture, that in terms of morals and ethics of criminal acts of corruption can assess that the condition of Indonesia is now very sad by looking at the increasingly widespread practice of corruption. Reconstruction of the value, that the role of law enforcement officials is required in working together to provide legal protection for reporting witnesses for the creation of law enforcement and justice, with the existence of legal protection against reporting witnesses, especially in granting witness rights. Furthermore, it is necessary to reconstruct the sound of Article 5 paragraph (3) of the Law of the Republic of Indonesia Number 31 of 2014. The resulting theory is Theory of Legal Protection against Witnesses and Dignified Reporting Witnesses. The basic thoughts in the meaning of the resulting theory are able to provide fair benefits to Witnesses and Reporting Witnesses in Corruption.

Keywords: legal protection, witnesses, corruption, justice

Introduction

Every good citizen is a citizen who knows his rights and obligations. One of the rights and obligations imposed by law on every citizen, they must participate in defending the public interest. And one aspect of the defense of the public interest, is to take part in the resolution of criminal acts, if the information is needed in the settlement ^[1]. Therefore witnessing is an "obligation" for everyone ^[2] the importance of the witness's position in a criminal justice process has been emphasized in the provisions of Articles 184-185 of the Criminal Procedure Code (KUHAP).

Article 184 places witness testimony in the first place above other evidences in the form of expert statements, letters, instructions and statements of the accused. While Article 185 Paragraph 2 states ""A witness's statement alone is not enough to prove that the defendant is guilty of the actions that were indicted against him"". However, Paragraph 3 of Article 185 also affirms "The provisions referred to in Paragraph 2 do not apply if accompanied by other valid evidence". This statement of more than one witness without

any other evidence, can be considered sufficient to prove whether a defendant is guilty or not.

Once the importance of the witness's position in revealing a crime in Articles 184 and 185, it is definitely necessary to have a guarantee of security and free from fear for witnesses when examined before the trial. The witness must be freed from the fear of the consequences of the information he or she gave. In fact, this guarantee of security and freedom from fear is very important so that witnesses do not hesitate to tell the real story ^[3]. Every person has the right to protect themselves, their family, honor, dignity and property under his control, and is entitled to a sense of security and protection from the threat of fear to do or not do something that is a human right.

Witnesses are an important component in solving legal problems. In this case, the problem faced is effectiveness in law enforcement, especially in terms of resolving cases of gross human rights violations and resolving corruption cases. The main obstacle in resolving these cases is the lack of community participation to act as reporters and witnesses. Therefore, the objective of the Witness Protection Act

¹ M Yahya Harahap. Pembahasan Permasalahan dan Penerapan KUHAP, Garuda Metropolitan Press, Jakarta, 1988, 680.

² Pasal 159 KUHAP.

³ Oksidelfa Yanto. Melindungi Saksi dengan Undang-Undang, Republika 15, 2006.

should not be limited to protecting witnesses, but rather to increase effectiveness in law enforcement, especially in solving human rights violations and corruption cases^[4].

Becoming a witness is an obligation that is required by law or the legal system in Indonesia. Because witnesses see, hear, or experience an event. But unfortunately, the obligation implied in the law and the legal system in Indonesia does not always make people want to provide information about what they see, hear, and witness to a criminal act^[5].

Most people who see an event are reluctant to be witnesses because they are afraid of becoming victims or acts of violence. That fear, of course, is because there is no guarantee of personal safety for witnesses who want to tell an event that they have seen or witnessed. Besides that, the acquisition of witness rights contained in the criminal justice system, namely the existence of justice, protection, and respect for human dignity, has not been fulfilled so far.

If you see a systematic system of corruption, accompanied by the involvement of state officials or influential persons, the fear of witnesses or reporters of indications of corruption needs to be eliminated with legal certainty and the fulfillment of the sense of justice they wish to achieve. In this case, the Witness Protection Act is clearly needed to provide guarantees and legal certainty for witnesses who have the courage to disclose corruption cases. Abdul Rahman Saleh even stated that he would provide protection for witnesses who were willing to work together and provide important information to the Attorney General's Office regarding corruption cases, in order to eradicate corruption^[6].

Protection is needed given to witnesses and witnesses reporting criminal acts of corruption, namely protection of all threats that can disturb the peace of life of witnesses. Protection for Witnesses and Reporting Witnesses in this case the protection of personal security, family and property, and free from threats regarding the testimony that will be given. This right has been granted since the investigation phase began and ended in accordance with the decision of the Witness and Victim Protection Agency (LPSK).

The legal protection is able to provide fair benefits to witnesses and reporting witnesses in criminal acts of corruption. The protection is given to witnesses and reporting witnesses, because of the importance of the position of witnesses in revealing a criminal act of corruption, it is definitely necessary to have security guarantees and free from fear for witnesses when examined before the trial.

Based on the background above, the author formulates the problem, namely: How are the Principles for the Protection of Witnesses and Reporting Witnesses in Corruption in Indonesia Today? What are the weakness and how to reconstruct it for the better?

Method of research

To be able to analyze the subject matter well, the authors in conducting research adheres to the paradigm of

constructivism, using sociological juridical legal research. Research data sources consist of primary data sources and secondary data sources, and qualitative descriptive analysis.

Research result and discussion

The principle of regulating the protection of witnesses and reporting witnesses in criminal acts of corruption in Indonesia today is that most people who see an incident are reluctant to become witnesses because they are afraid of becoming victims or acts of violence. That fear, of course, is because there is no guarantee of personal safety for witnesses who want to tell an event that they have seen or witnessed. Besides that, the acquisition of witness rights contained in the criminal justice system, namely the existence of justice, protection, and respect for human dignity, has not been fulfilled so far.

LPSK was born as an independent state institution that protects witnesses and victims (especially in child protection). As an independent state institution in its journey, LPSK also has weaknesses that result in less than the maximum in carrying out its duties as an Independent State Agency that protects witnesses and victims. The number of witnesses who are unwilling or unwilling to be witnesses or dare not reveal testimony is actually one of the reasons is the lack of adequate guarantees, especially guarantees for certain protections or certain safe mechanisms for witnessing. Witnesses, including reporters, often even experience intimidation or lawsuits over the testimonies or reports they provide and not a few witnesses who eventually become suspects or even convicted. The witness's unwillingness to give testimony in court proceedings, especially for cases such as violence against women, domestic violence, corruption, and human rights violations.

In this study the author found that the protection of witnesses was not optimal despite the already existing regulations. This is due to the lack of understanding among law enforcers to provide protection to witnesses, even though the witness is a criminal offense, there should be equal treatment and protection to witnesses how they are treated to defendants for their rights in the criminal justice system.

Endin Wahyudin, who reported the alleged corruption of 3 (three) Supreme Court justices, eventually became a defendant at the trial. Learning from Endin's case, the public came to understand that the state has not provided adequate legal guarantees and protection for witnesses reporting corruption^[7].

Witnesses are an important component in solving legal problems. In this case, the problem faced is effectiveness in law enforcement, especially in terms of resolving cases of gross human rights violations and resolving corruption cases. The main obstacle in resolving these cases is the lack of community participation to act as reporters and witnesses. Therefore, the objective of the Witness Protection Act should not be limited to protecting witnesses, but rather to increase effectiveness in law enforcement, especially in solving human rights violations and corruption cases^[8].

Becoming a witness is an obligation that is required by law or the legal system in Indonesia. Because witnesses see,

⁴ Agung Hendarto. Catatan Terhadap Perlindungan Saksi, Koran Tempo, Rabu, 22, 2006.

⁵ Oksidelfa Yanto, Melindungi Saksi dengan Undang-Undang, Republika 15, 2006.

⁶ Abdul Rahman Saleh. Jaksa Agung Akan Lindungi Saksi Pelapor Kasus Korupsi, Tempo Interaktif, Wednesday, 20, 2005.

⁷ Sudirman Said, Undang-Undang Perlindungan Saksi, Tempo-No. 09/XXXIV/25 April-01, 2005.

⁸ Agung Hendarto, Catatan Terhadap Perlindungan Saksi, Koran Tempo, Rabu, 22, 2006.

hear, or experience the related event. But unfortunately, the obligation implied in the law and the legal system in Indonesia does not always make people want to provide information about what they see, hear, and witness to a criminal act^[9].

Most people who see an event are reluctant to be witnesses because they are afraid of becoming victims or acts of violence. That fear, of course, is because there is no guarantee of personal safety for witnesses who want to tell an event that they have seen or witnessed. Besides that, the acquisition of witness rights contained in the criminal justice system, namely the existence of justice, protection, and respect for human dignity, has not been fulfilled so far.

If you see a systematic system of corruption, accompanied by the involvement of state officials or influential persons, the fear of witnesses or reporters of indications of corruption needs to be eliminated with legal certainty and the fulfillment of the sense of justice they wish to achieve. In this case, the Witness Protection Act is clearly needed to provide guarantees and legal certainty for witnesses who have the courage to disclose corruption cases. Abdul Rahman Saleh even stated that he would provide protection for witnesses who were willing to work together and provide important information to the Attorney General's Office regarding corruption cases, in order to eradicate corruption^[10].

With the ratification of the Convention Against Corruption pursuant to Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (Convention of the United Nations Anti-Corruption, 2003) as well as Law Number 13 of 2006 concerning Protection of Witnesses and Victims which has been amended by Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, which requires protection of victims, witnesses and reporting witnesses. It is therefore expected to be able to motivate those who are aware of the occurrence of criminal acts of corruption to dare to uncover the truth that has been deliberately covered up by a conspiracy of corruptors.

It has become common knowledge that witnessing in a criminal case is not a pleasant thing. It has also been acknowledged that many criminal cases (especially corruption, narcotics, and heavy violations of human rights) cannot be brought to court because of limited evidence, especially witness statements. However, it turns out that the role of witnesses in the criminal justice process is very far from the attention of the public and law enforcement. It is quite often the mass media reports on the reluctance of witnesses to provide information to the authorities. In addition to the reluctance to be involved in a judicial process, it was also identified that there were a number of witnesses who did not appear out of fear, or rather because they were threatened by the alleged perpetrators.

Some cases involving alleged corruption, for example, have threatened and terrorized a number of people who will be witnesses, or have provided information regarding the case. Cases of corruption that foundered without producing punishment are countless. Who dares to give information as a witness in the criminal justice process without guarantee of legal protection.

⁹ Oksidelfa Yanto. Melindungi Saksi dengan Undang-Undang, Republika 15, 2006.

¹⁰ Abdul Rahman Saleh. Jaksa Agung Akan Lindungi Saksi Pelapor Kasus Korupsi, Tempo Interaktif, Rabu, 20, 2005.

It is no exaggeration to say that witness protection is still a dream in the criminal justice process in Indonesia. A fact that is very different from the protection of a suspect or defendant. The Criminal Procedure Code has formulated a number of rights for defendants who protect it from various possible violations of human rights, as stipulated in Article 50 to Article 68 of the Criminal Procedure Code. Several decades ago it was complained that the concern for the suspect/defendant was already so high that it gave rise to the perception that 'the pendulum has swung too far.' This complaint is based on the amount of legal protection in the form of various rights granted to a suspect/defendant.

Therefore, the time has come for greater attention to be given to other parties involved in the criminal justice process, especially witnesses (including victim witnesses). When relying on the principle of equality in law (equality before the law) which is one of the prerequisites in a rule of law, it is only natural that guarantees of protection by the state of witnesses in the criminal justice process are stipulated in the legislation. Predictable, without legal protection for witnesses a number of large cases will be very difficult to uncover.

Becoming a witness is an obligation that is required by law or the legal system in Indonesia. Because witnesses see, hear, or experience an event. But unfortunately, the obligation implied in the law and the legal system in Indonesia does not always make people want to provide information about what they see, hear, and witness to a criminal act^[11].

Most people who see an event are reluctant to be witnesses because they are afraid of becoming victims or acts of violence. That fear, of course, is because there is no guarantee of personal safety for witnesses who want to tell an event that they have seen or witnessed. Besides that, the acquisition of witness rights contained in the criminal justice system, namely the existence of justice, protection, and respect for human dignity, has not been fulfilled so far.

If you see a systematic system of corruption, accompanied by the involvement of state officials or influential persons^[12], the fear of witnesses or reporters of indications of corruption needs to be eliminated by legal certainty and the fulfillment of the sense of justice they wish to achieve. In this case, the Witness Protection Act is clearly needed to provide guarantees and legal certainty for witnesses who have the courage to disclose corruption cases^[13].

Weaknesses in legal protection for witnesses and reporting witnesses in Article 5 paragraph (3) of the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims have not been able to provide fair benefits to reporting witnesses and witnesses in criminal acts of corruption. The importance of the witness's position in uncovering a criminal act of corruption, it is definitely necessary to have security guarantees and be free from fear for witnesses when examined before the trial. The witness must be freed from the fear of the consequences of

¹¹ Oksidelfa Yanto. Melindungi Saksi dengan Undang-Undang, Republika 15, 2006.

¹² Wahyu Widodo, Supto Budoyo, Toebagus Galang. The Role of Law Politics on Creating Good Governance and Clean Governance for a Free-Corruption Indonesia in 2030, The Social Sciences, Year. 2018; 13(8):1307-1311. DOI: 10.36478/sscience.2018.1307.1311.

¹³ Abdul Rahman Saleh. Jaksa Agung Akan Lindungi Saksi Pelapor Kasus Korupsi, Tempo Interaktif, Rabu, 20, 2005.

the information he gave. In fact, this guarantee of security and freedom from fear is very important so that witnesses do not hesitate to tell the real story.

Conclusion

The principle of regulating the protection of witnesses and reporting witnesses in criminal acts of corruption in Indonesia currently is that most people who see an incident are reluctant to become witnesses because they are afraid of becoming victims or acts of violence. That fear, of course, is because there is no guarantee of personal safety for witnesses who want to tell an event that they have seen or witnessed. Besides that, the acquisition of witness rights contained in the criminal justice system, namely the existence of justice, protection, and respect for human dignity, has not been fulfilled so far.

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