

## Legal Reconstruction of Witness and Victim Protection Institutions in the Criminal Justice System

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**Abstract.** *This paper aims to explore the urgency of reconstructing the institutional role of the Witness and Victim Protection Agency (LPSK) within Indonesia's criminal justice system. Using a normative and empirical legal research methods, which is done by literature review, field exploration, and analysis, it builds an accurate and concrete model for implementing the construction of the position of the LPSK in the current criminal justice system. This study found that bureaucratic challenges—such as financial limitations, inadequate human resources, and institutional stagnation—have constrained the justice system's ability to function equitably. These conditions often lead to the centralization of investigative power and a compartmentalized system in which oversight is limited and reactive. Within this context, LPSK holds potential as a horizontal oversight mechanism, offering checks on investigators' authority and ensuring victim and witness rights are safeguarded during proceedings. This paper further analyzes how the Criminal Procedure Code anticipates horizontal supervision between law enforcement agencies, particularly between investigators and public prosecutors, and how LPSK can contribute to this oversight structure. However, limitations in institutional capacity and the centralized nature of LPSK pose challenges to its accessibility and effectiveness. Strengthening LPSK's institutional capacity and expanding its regional presence are critical for responding to the growing demand for witness and victim protection, including in cases involving gross human rights violations. This study underscores the need for systemic reform and political will to ensure that protection of witnesses and victims becomes an integral part of a due process-oriented criminal justice system in Indonesia.*

**Keywords:** *Construction; Criminal; Justice; Protection; Victim.*

### 1. Introduction

Indonesia, as a country adhering to the civil law tradition rooted in the Continental European legal system, relies heavily on codified laws as the basis for legal certainty and justice. This system emphasizes the written law as a definitive source, interpreted and enforced by the judiciary within a hierarchical legal structure—from the Constitution and statutes down to regional regulations. Rasjidi (1993) contrasts modern civil law with its

Roman origins, noting that both Roman law and customary law developed as *living law systems*—constructed through community practices and norms. In Indonesia’s case, however, the reliance on written regulations means that forming responsive and adaptive legal norms is often slow and procedurally rigid. This rigidity presents challenges in aligning legal protections with the real-time needs of citizens—particularly vulnerable groups like witnesses and victims of crime.

In this context, the protection of witnesses and victims is a relatively new legal development. It was only in 2006 that Law No. 13 on the Protection of Witnesses and Victims was enacted, establishing the legal framework for what would become a formalized protection mechanism (Rizal, 2018; Siregar, 2019). Comparatively, international norms have long emphasized the need for robust victim and witness protection. Instruments like the Rome Statute—specifically Article 57(c)—explicitly mandate the protection of victims, witnesses, and evidence in international criminal proceedings (Waliadin & Nofianti, 2021; Simmler et al., 2023). This global awareness serves as both a benchmark and an impetus for Indonesia to strengthen its mechanisms in a way that not only responds to domestic challenges but also reflects international standards.

Despite the legal breakthrough, Law No. 13 of 2006 exhibits structural weaknesses that hinder its implementation. Scholars have pointed out that the law lacks a strong procedural backbone and is insufficiently integrated with other components of the criminal justice system (Durahman et al., 2021). For instance, Article 11(2) and (3) merely states that the Witness and Victim Protection Agency (LPSK) is based in the national capital and may form regional branches as needed. However, no detailed provisions exist on how to establish or operationalize those branches. Without a follow-up government regulation—as is typically required in Indonesia’s legal system—these mandates remain aspirational rather than functional (Feriyanita et al., 2020; Komariah, 2015). This legal vacuum has contributed to inconsistencies in victim protection services across the country.

The absence of regional LPSK offices disproportionately affects victims in rural or remote areas, such as those in Eastern Indonesia, where case handling tends to be slower and less accessible. Establishing LPSK branches outside Jakarta is not merely an administrative convenience—it is a strategic necessity to ensure equity and efficiency in the protection process. Studies show strong regional demand and enthusiasm for local LPSK representation, which would enhance coordination with local law enforcement and judicial authorities while bringing services closer to the communities in need (Eka Saputra, 2023; Jayadi, 2020). Decentralizing LPSK operations would also signify a stronger governmental commitment to human rights and procedural justice, especially for those without the financial or social capital to navigate the legal system on their own.

Further, the current law’s narrow conceptualization of who qualifies as a “witness” and its lack of clarity about the LPSK’s position within the broader criminal justice framework hampers its effectiveness. The rigid structure of protection procedures, as currently codified, limits the LPSK’s capacity to respond proactively. In contrast, international practices often adopt a more expansive view—ensuring that both direct and indirect victims of crimes, including whistleblowers and informants, are given comprehensive protection. Comparative studies suggest that integrating these best practices into Indonesia’s legal framework could lead to a more resilient, human-centered criminal justice system (Adawiyah & Rozah, 2020; Rasdi et al., 2022; Wallengren et al., 2023).

Ultimately, any effort to reform witness and victim protection laws must not only address procedural gaps but also foster synergy among key institutions, including the police, prosecutors, judiciary, and civil society. The LPSK's role should be institutionalized from the early stages of investigation, ensuring horizontal oversight and collaborative mechanisms. Doing so would represent a shift toward a *due process* model—where fairness, participation, and human dignity are central. Reforming the legal framework along these lines is not merely a legal imperative; it is a moral one that aligns with Indonesia's constitutional commitment to uphold justice for all.

## **2. Research Methods**

This study uses a combination of normative and empirical legal research methods to examine and reconstruct the position of the Witness and Victim Protection Agency (LPSK) within Indonesia's criminal justice system. The normative approach involves a literature and regulatory review, particularly focusing on statutory provisions, legal doctrines, and comparative international practices. The empirical component includes field data collection through interviews and document analysis to understand the actual practices and implementation challenges on the ground. The research is oriented by the lens of legal utility and responsibility theory, which guided the evaluation of how laws are constructed not only to fulfill normative ideals (*das sollen*) but also to respond to the realities of legal practice (*das sein*). This dual approach ensures that the proposed model for LPSK's role is both legally grounded and practically responsive.

## **3. Results and Discussion**

### **3.1. Legal Framework and Legal Protection under Law No. 13 of 2006**

Criminal law is an essential public law that strengthens state administrative law enforcement by defining prohibited behavior that threatens public security and welfare (Hutabarat et al., 2023). In seeking and finding clarity about crimes, law enforcement agencies often face significant challenges due to the inability to present witness or victims who often face both physical and psychological threats (Joshefin Mareta, 2016). Such intimidation, particularly towards victims, witnesses, or their families, creates fear, often hindering criminal investigations and delaying the legal process (Wahab Aznul Hidayat, 2023).

Law Number 13 of 2006 represents a breakthrough by providing legal guarantees and acknowledging the state's responsibility to protect witnesses, victims, and reporters. For women victims, this law becomes an important tool for accessing justice, as it offers protections from criminal and civil prosecution related to their reports and testimonies that will be, is being, or has been given. In addition, it also provides guarantees for reporters, which are important as well, especially since they need to have the courage to independently report crimes that have befallen them (Salundik, 2023; van Nijnatten et al., 2014). This law extends protection to victims and witnesses in particularly vulnerable situations, such as those involved in human trafficking or armed conflict, emphasizing principles of human dignity, safety, justice, non-discrimination, and legal certainty.

### **3.2. Victim Protection**

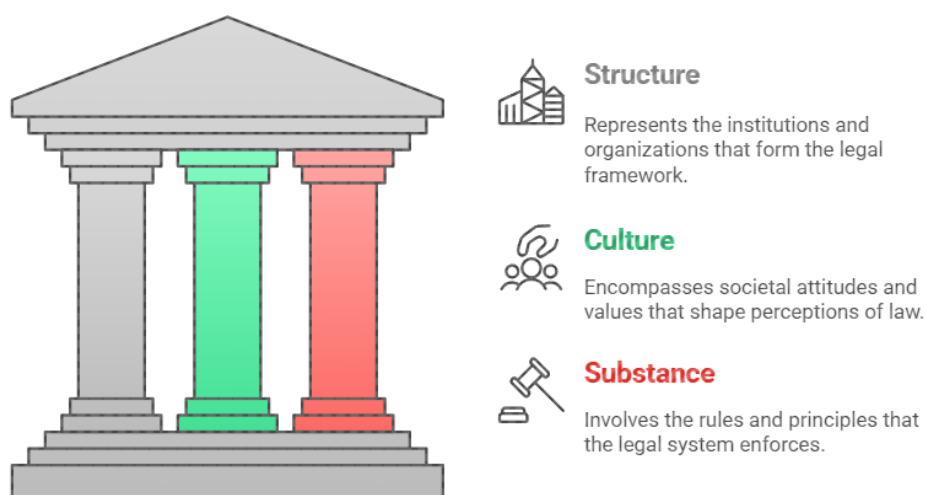
Victim protection aligns with the goal of conflict resolution in criminal law, which aims to restore balance and foster peace within society. The basis for the victim protection can

be seen from several theories, one of which is the theory of utility. This theory underscores the importance of ensuring that victim protection generates more benefits than not applying such measures, thereby enhancing the effectiveness of the criminal justice system (Jayadi, 2020). Another theory which becomes the basis for victim protection is theory of responsibility. It highlights the obligation of perpetrators to compensate victims for their losses, reinforcing the need for legal protection (Jayadi, 2020).

Several legal principles must be considered in ensuring effective victim protection. These principles include the responsibility of the state to protect victims, and the anthropocentric view of law, which asserts that the law should primarily serve the needs of individuals within society. The relationship between victims, law enforcers, and legal institutions is defined by legal culture, which shapes attitudes and behaviors regarding law (Friedman, 2007; Seidmann, 2020).

### 3.3. Justice and Law Enforcement within Bureaucracy

To understand how the legal system functions as a dynamic process, Friedman (2007) proposed that it comprises three interrelated components: structure, culture, and substance. The structural component refers to the institutions, roles, and organizations that make up the legal system, such as courts, law enforcement bodies, and legislative institutions (Comaroff & Comaroff, 2007). The cultural component encompasses the societal attitudes, values, and expectations toward law and justice, which influence how laws are perceived, obeyed, or resisted. Lastly, the substantive component involves the actual rules, doctrines, and principles that the legal system enforces. These three elements interact continuously, shaping how justice is delivered and experienced in society. Understanding these dimensions is crucial before analyzing how justice and law enforcement operate within the broader framework of a bureaucratic legal system.



**Figure 1.** Dynamic Component of the Legal System

In Indonesia, the philosophical meaning of "justice" is embedded in the second Precept of Pancasila: "Just and civilized humanity." This principle emphasizes that legal decisions must be rooted in objective, non-arbitrary standards, and that justice must be humane in its execution. The relationship between this ideal and bureaucratic practice can either

support or obstruct the realization of criminal justice, especially in terms of victim protection (Durahman et al., 2021). Law, therefore, does not operate in a vacuum of abstract logic; it is deeply embedded in the behaviors and practices of institutions and individuals. From Weber's perspective, bureaucracies operate on a rational-legal authority, where reward and recognition are tied to rank and performance. In such systems, individuals with visible institutional authority—such as uniforms, ranks, or titles—tend to be more recognized and respected, while those without such markers may struggle to assert influence within the legal structure.

Within this bureaucratic context, central authorities in legal institutions play a pivotal role in setting direction, coordinating actions, and managing competing priorities. They determine the organization's main goals and how human and material resources are allocated to achieve them (Dewi & Saleh, 2020). This centralized control reflects the logic of formal authority and hierarchical structure. However, as Amitai Etzioni noted, not all organizations function strictly as bureaucracies. He distinguishes between the two by noting that while "bureaucracy" often carries a negative connotation—especially regarding rigidity and inefficiency—"organization" is a more neutral term. Many modern organizations, including those within the legal and healthcare sectors, deviate from classic bureaucratic models. For instance, some hospitals may lack a single central decision-maker, reflecting more decentralized or networked organizational forms (Nasution, 2023). This distinction becomes relevant when examining law enforcement agencies, which may retain strong bureaucratic features, yet also adapt to more flexible organizational practices depending on institutional culture and leadership.

### **3.4. Law Enforcement Agencies, Bureaucratic Constraints, and Horizontal Supervision**

Law enforcement agencies are responsible for carrying out essential legal functions, such as protection, justice, and national development (Susanto, 2020). In practice, these agencies operate within their own bureaucratic structures, each forming internal norms, goals, and decision-making processes. While the institutions are established to uphold the rule of law, they are ultimately composed of individuals—law enforcers—whose interpretations and behaviors significantly influence how the law is implemented. The effectiveness of criminal investigations, for example, largely depends on the skill, professionalism, and organizational capacity of investigators and interrogators in managing the case materials and evidence.

However, this bureaucratic structure is not without challenges. Law enforcement officers do not operate in a vacuum; they work within the broader social and cultural context, often navigating the competing interests and pressures of various stakeholders. These influences can result in conflicts of interest that shift institutional goals from public-oriented justice to pragmatic, internalized objectives—a phenomenon often described as the emergence of a bureaucratic subculture. Chambliss and Seidman emphasized that the formal description of how criminal law is supposed to function often diverges from the actual behavior of legal actors. Similarly, Donald Black's concept of the "behavior of law" links legal outcomes to broader aspects of social life, reinforcing the idea that law enforcement cannot be fully understood without considering its socio-cultural environment.

Financial limitations, insufficient facilities, and human resource constraints further restrict how justice institutions operate. These bureaucratic barriers often force agencies to

develop survival strategies, which may include informal levies or administrative fees—mirroring corporate practices—even though these institutions are public in nature (Triplett, 2012). Such tendencies have contributed to public skepticism, as law enforcement is often seen as favoring those with power and marginalizing those without. This perceived imbalance fosters a social stigma of discrimination in law enforcement practices (Dewi & Saleh, 2020).

A.S. Blumberg notes that in modern bureaucratic institutions, the needs of the personnel may sometimes take precedence over those of the public they are meant to serve. In such cases, clients of the justice system—especially victims—can become secondary, with bureaucratic limitations cited as justifications for unresolved cases (Prastyawan, 2020). These dynamics underscore the need for robust mechanisms of horizontal supervision, where law enforcement agencies monitor each other to maintain fairness and accountability. The involvement of public prosecutors in overseeing investigations, alongside institutions like LPSK, represents a form of internal checks and balances that is crucial in preventing abuse of power and ensuring that justice is served impartially.



**Figure 2.** Horizontal Supervision in Justice

In line with the principle of separation of powers, this horizontal supervision serves as a critical safeguard against the concentration of power within a single institution. The idea is to maintain an equilibrium where different branches of the justice system—executive, judiciary, and law enforcement—operate independently while mutually controlling each other. Without such mechanisms, the risk of arbitrariness and authoritarianism in the application of criminal law becomes more pronounced.

### 3.5. The Role of LPSK and Institutional Capacity

Within Indonesia’s compartmentalized criminal justice system, investigators and public prosecutors often function as distinct subsystems. This separation has concentrated significant power in the hands of investigators, particularly during the investigation stage, which can lead to monopolistic control over criminal policy (Nasution, 2023). Although supervision mechanisms such as pretrial motions are available, their post-factum nature makes them passive; judges only act upon complaints filed by aggrieved

parties. In contrast, assigning prosecutors a more active supervisory role could improve oversight, enabling prosecutors to monitor investigations in real time.

Such horizontal oversight aligns with the broader spirit of criminal justice reform toward a due process model, which emphasizes checks and balances among law enforcement bodies. The revised Criminal Procedure Code reflects this shift, requiring law enforcement institutions to monitor each other's actions in a "checking system" model. This inter-agency supervision is grounded in both functional and institutional coordination (Craig & Sailofsky, 2024), providing a framework for oversight between investigators and prosecutors and opening a role for the LPSK as an external party representing victims and witnesses.

The LPSK (Lembaga Perlindungan Saksi dan Korban), established under Law No. 13 of 2006 and operational since 2008, is mandated to protect witnesses and victims through a range of services. Initially, its efforts focused on strengthening institutional capacity—recruiting personnel, building infrastructure, and developing internal procedures. Today, the LPSK has broadened its scope by handling real-time cases, offering protection as stipulated by the Witness and Victim Protection Law, and increasingly engaging at the regional and international levels (Salundik, 2023).

Despite these advancements, the institution still faces challenges. Many victims lack legal literacy, economic capacity, and social capital to access protection programs (Posch et al., 2023). The LPSK's centralization in Jakarta further limits its outreach, especially for victims in rural or remote regions. Given these structural limitations, institutional support—from the state and society—is essential to strengthen its presence nationwide and enable the realization of its mandate to protect the vulnerable.

### **3.6. Future Directions for Victim and Witness Protection**

Looking ahead, the protection of victims and witnesses in Indonesia hinges on several factors: the political will of the government, the institutional strengthening of the LPSK, and the ability of the criminal justice system to adopt meaningful horizontal oversight mechanisms. As Indonesian society becomes more critical, open, and legally aware, the demand for protection—particularly in high-profile or gross human rights cases—is expected to increase. This trajectory calls for a justice system that is not only reactive but proactively integrative, embedding victim and witness protection into every procedural layer.

The expansion of the LPSK into the regions will be key to addressing inequality in access to protection. The institution can also play a pivotal role in facilitating restitution and compensation, especially in gross human rights violations, either before or after a court decision is finalized. However, considering the LPSK's limited number of staff and regional representatives, courts should be encouraged to interpret legal pathways flexibly, particularly in cases where the victim has not passed through LPSK protocols (Hufron & Syofyan Hadi, 2023). Ultimately, the future of victim and witness protection in Indonesia will depend on a multi-sectoral commitment—where law enforcement bodies are properly supervised, victims are empowered to exercise their rights, and institutions like the LPSK are given the resources, autonomy, and legitimacy to fulfill their role effectively.

#### 4. Conclusion

The effectiveness of witness and victim protection in Indonesia depends not only on a solid legal foundation but also on a coherent implementation across all criminal justice institutions. The LPSK must not be treated as a peripheral institution but should be fully integrated into the criminal justice process, starting from the investigation stage. To ensure this, the presence of LPSK officers at every level of law enforcement—sectoral police stations, resort police, and regional police—must be institutionalized. Furthermore, the protection mandate must shift from a reactive to a proactive model, where LPSK initiates support without requiring a request from victims or witnesses. In alignment with international norms and the spirit of Law No. 13 of 2006, strengthening LPSK's credibility and operational capacity is critical. This requires strong political will, inter-agency coordination, and public participation. Without collective commitment from all components of the criminal justice system, legal advancements risk remaining symbolic. Going forward, Indonesia must ensure that the protection of witnesses and victims is not merely an aspiration, but a realized standard upheld in every layer of practice—from the courtroom to the community.

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