

## Effectiveness and Problems of Implementation of Assistance for Witnesses

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### Abstract.

*Proof of a crime, the evidence that must be met is at least 2 pieces of evidence. Evidence that must be submitted in proving a crime is evidence in the form of witness statements. Witness testimony will determine whether a crime can be proven or not before the trial. Considering the importance of witness testimony in proving a crime, it should be balanced with legal protection for witnesses, one of which is by providing assistance in the form of medical assistance, psychosocial rehabilitation and/or psychological rehabilitation. This study aims to answer the problems, namely: first, why is assistance needed for witnesses? second, has the implementation of providing assistance for witnesses been effective? Third, what are the problems faced in providing assistance for witnesses and what are the solutions? The research method uses sociological juridical with a legal research approach using secondary data as initial data, which is then followed by primary data in the field or on the community. Primary data was obtained by obtaining directly from the field through unstructured interviews, secondary data obtained through library research consisting of primary legal materials and secondary legal materials. Qualitative data analysis emphasized the analysis on the process of deductive and inductive inference as well as on the dynamics of the relationship between phenomena that observed using scientific logic. The research problems were analyzed using the theory of legal protection, the theory of legal effectiveness and the theory of justice. The results of the research and discussion of this study can be concluded that the reasons for the need for assistance for witnesses are because witnesses are very decisive evidence in the process of proving criminal cases, witnesses must be free and safe in giving testimony and many witnesses need medical assistance, psychological rehabilitation and/or or psychosocial rehabilitation. Regarding the effectiveness of assistance for witnesses, currently it has not been effective. This is due to the legal factors themselves, law enforcement factors and community factors. This is because there are problems from the lack of knowledge by law enforcement officers, the absence of rules that bind law enforcers, the absence of synergy between law enforcement agencies and the lack of socialization to the public regarding the assistance for witnesses.*

*Keywords: Assistance, Enforcement; Evidence; Witness.*

### 1. Introduction

Indonesia is a country based on law, that is one of the mandates of the 1945 Constitution. The consequence of Article 1 paragraph (3) of the 1945 Constitution is that the way people live is subject to applicable laws, both private/civil law and public/criminal law. In criminal law, it consists of norms that contain requirements and prohibitions which (by the legislators) have been associated with a sanction in the form of punishment, namely a special suffering.<sup>1</sup>

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<sup>1</sup>Understanding Criminal Law by Prof.Dr/W.LG Lemaire quoted by Drs.P.A.F Lamintang in the book *Dasar-dasar Hukum Pidana Indonesia*, Bandung: Citra Aditya Bhakti, 1997.p.2.

Criminal procedural law which is also known as formal criminal law regulates how the government maintains the continuity of the implementation of material law. The implementation is carried out based on Act No. 8 of 1981 concerning Criminal Procedure Code which aims to find material truth starting from the process of investigation by investigators, demands by the Public Prosecutor and examination and decision by judges. In the process of seeking material truth, it requires thorough evidence before the court. The process of proof in criminal law has actually started from the preliminary stage, namely investigation and investigation.<sup>2</sup> Regarding the evidentiary system, what is adopted in Indonesia is a negative legal proof system (negative *wetelijk*). This can be concluded from Article 183 of the Criminal Procedure Code which reads: "A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has actually occurred and that the accused is the perpetrator."

From the article it is clear that evidence must be based on the law (KUHAP), namely valid evidence as referred to in Article 184 of the Criminal Procedure Code accompanied by the judge's conviction obtained from the evidence. The evidence according to Article 184 of the Criminal Procedure Code consists of statements of witnesses, expert statements, letters, instructions and statements of the defendant. The first piece of evidence is the testimony of witnesses. This illustrates how important witnesses are in proving a crime. Being a witness is a legal obligation if someone is called to appear in court to be a witness, so that if a witness does not want to fulfil a valid summons.<sup>3</sup> This article proves how important witness testimony is in proving a crime.

The definition of a witness and witness testimony is strictly regulated in the Criminal Procedure Code. Based on Article 1 number 26 of the Criminal Procedure Code states, "Witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case which he has heard himself, seen and experienced himself". Furthermore, Article 1 number 27 of the Criminal Procedure Code states "Witness testimony is one of the evidence in a criminal case in the form of testimony from a witness regarding a criminal event that he heard for himself, saw for himself and experienced himself by mentioning the reasons for his knowledge.

In fact, witnesses are part of the community who actually have no problem in the sense of not committing acts that have legal responsibility for the occurrence of criminal acts, even witnesses play a major key role in the criminal law evidence system. The view of the criminal justice system towards witnesses that witnesses are part of the evidence is a view since the birth of the Criminal Code<sup>4</sup> until the birth of the Criminal Procedure Code. Witnesses as protected subjects because of the importance of the criminal justice system to witnesses to provide information. Witnesses are indeed very central evidence because the absence of 2 (two) witnesses as evidence of a criminal act cannot be submitted to the prosecution stage.

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<sup>2</sup>Hiariej, Eddy OS, (2012), *Teori dan Hukum Pembuktian*, Jakarta: Erlangga, p. 96.

<sup>3</sup>Article 159 Paragraph (2) KUHAP

<sup>4</sup>Nurul Ghufroon, "Kedudukan Saksi Dalam Menciptakan Peradilan Pidana Yang Bebas Korupsi", *Jurnal Anti Korupsi*, Vol. 2 No. 2, 2012, PUKAT FHUJ, p. 43

Therefore, witness statements in the investigation process and the presence of witnesses in providing information play a very important role in the evidentiary process so that witnesses need to be protected both from threats from other parties, protection of family security and property.<sup>5</sup>

Legal protection is a protection given to legal subjects in accordance with the rule of law, both preventive and in a repressive (coercive) form.<sup>6</sup>The importance of the protection of witnesses and victims in the criminal justice process is not regulated in the criminal procedural law so that at that time a law that specifically regulates witness protection was promulgated so that Act No. 13 of 2006 concerning the Protection of Witnesses and Victims on August 11, 2006 which was later amended by Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims. If we examine further, the law on the protection of witnesses and victims, which is then followed by a Government Regulation of the Republic of Indonesia as its implementing rule, regulates a lot of compensation and restitution for victims. What about the witness who only received assistance in the form of medical assistance and psychosocial and psychological rehabilitation assistance.

Based on the above background, the purpose of this research is to find out whether the implementation of providing assistance for witnesses has been effective or not and to find out the problems faced in the implementation of providing assistance to witnesses and their solutions.

## 2. Research Methods

The approach that the author uses in this research is a sociological juridical approach. The sociological juridical approach emphasizes research that aims to obtain legal knowledge empirically by going directly to the object.<sup>7</sup>Sociological Juridical Research is legal research using secondary data as initial data, which is then followed by primary data in the field or on the community, examining the effectiveness of a regulation and research that wants to find a relationship (correlation) between various symptoms or variables, as a data collection tool consisting of studies documents or library materials and interviews.<sup>8</sup>

## 3. Results and Discussion

The process of proving a crime cannot be separated from the evidence of witness statements.<sup>9</sup>Given the importance of witness testimony in proving a criminal act, it is only natural that witnesses who give testimony at trial for the sake

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<sup>5</sup>M. Yahya Harahap, (2008), *Pembahasan dan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali Edisi Kedua*, Jakarta: Sinar Grafika, p.54.

<sup>6</sup>Meta Permatasari and Umar Ma'ruf, (2020), "Implementation of legal Protection Against The Criminal Acts of Children & Witnesses in The Criminal Action of Stealing", *Law Development Journal ISSN: 2747-2604 Volume 2 Issue 4 December 2020 (565-572)* , p.568.

<sup>7</sup>Soerjono Soekanto, (2005), *Pengantar Penelitian Hukum*, Jakarta: Penerbit Universitas Indonesia Press, p. 51.

<sup>8</sup>Amiruddin, (2012), *Pengantar Metode Penelitian Hukum*, Jakarta: PT. Raja Grafindo Persada, p. 34.

<sup>9</sup>Andhika Widya Kurniawan and Maryanto, "Using of Letter Evidence by Defendant in Murder Crime", *Law Development Journal ISSN : 2747-2604 Volume 2 Issue 3, September 2020, (383 - 391)*, p.384

of explaining a crime have rights. In addition to the rights already regulated in the Criminal Procedure Code, such as the right of witnesses to be examined with a valid summons and taking into account a reasonable time lag between receiving the summons and the day the summons is fulfilled (Article 112 Paragraph 1 of the Criminal Procedure Code), witnesses have the right to be examined at their residence if there are compelling reasons. appropriate and reasonable (Article 113 KUHAP), witness statements are given without pressure from anyone and or in any form (Article 117 Paragraph 1 KUHAP), witnesses can sign the Minutes of Examination or refuse to sign it (Article 118 KUHAP), questions posed to witnesses must not be entangling (Article 166 of the Criminal Procedure Code),

Judging from the portion of the regulation in the Criminal Procedure Code, the rights obtained by witnesses are not as much as the rights obtained by the suspect/defendant, given the importance of witness testimony in proving criminal cases, so that Act No. 13 of 2016 concerning Protection of Witnesses and Victims was promulgated which is considered a breath of fresh air for protection, especially witnesses, which was later amended by Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2016. Likewise with the implementing regulations of the Law, from Government Regulation No. 44 of 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims, then changed to Government Regulation No. 7 of 2018 which was then amended again with Government Regulation No. 13 of 2016. 35 of 2020 concerning Amendments to Government Regulation No. 7 of 2018 concerning the Provision of Compensation.

In the Act and implementing regulations regarding the protection of witnesses and victims, witnesses who are not victims of a crime who give their statements during the investigation or evidence at trial do not have the same position in the form of protection compared to the protection of witnesses who are victims of a criminal. Especially for witnesses who are still in the category of children, psychologically they definitely need rehabilitation because the investigation process up to the trial process often treats witnesses as objects, not as subjects who need to be heard, and their legal rights are respected.<sup>10</sup>

We all know that witnesses in a crime are not only victims' witnesses, there are many kinds of witnesses such as reporting witnesses, crown witnesses and charge witnesses. These witnesses do not have an equal position with victim witnesses because they do not have direct contact with the suspect/convict. This does not mean that witnesses other than victim witnesses do not need the same protection as witnesses who are also victims of a crime.

In the implementing laws and regulations for the Protection of Witnesses and Victims, witnesses can be provided with assistance. The definition of assistance in Article 1 number 7 of Government Regulation No. 35 of 2020 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and/or Victims, namely services provided to witnesses and/or victims by LPSK in the form of medical assistance and psychosocial and psychological rehabilitation assistance.

The assistance provided to witnesses based on Article 37 paragraph (1) is only for several criminal acts, namely serious human rights violations, terrorism crimes,

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<sup>10</sup>Ria Latifah and Gunarto, (2020), "Legal Protection On Children AS Witness of Victim in Criminal Justice", *Law Development Journal ISSN: 2747-2604 Volume 2 No.2, June 2020 (68-76)*, p. 74.

crimes of trafficking in persons, crimes of torture, crimes of sexual violence, and severe persecution.

The procedure for applying for such assistance is by the witness submitting directly to the LPSK in writing in Indonesian on paper with sufficient stamp duty to the LPSK.<sup>11</sup> Regarding the Application for Assistance submitted by LPSK at least contains:

- witness identity
- Description of the event
- Form of assistance requested

If the application has been received by LPSK, then within 7 days a research will be conducted on the completeness of the application, if it is not complete then the application must be completed within 7 days by the applicant. In the application process, if the LPSK accepts the application, the LPSK issues an LPSK Decree which contains:

- the identity of the Witness and/or Victim;
- the type of Assistance provided;
- the period of granting Assistance; and
- hospital or health/rehabilitation center where Witnesses and/or Victims receive care and treatment.

Based on the 2020 LPSK Report supported by an interview by Syahrial Martanto Wiryawan, SH as the LPSK Expert for the Application Review Bureau, the party who mostly applies for legal protection to LPSK is the victim, while the witnesses and their legal representatives as well as the competent authorities in this case the Police, the Prosecutor's Office and the KPK have not submitted many applications. According to Soerjono Soekanto, the legal effectiveness theory according to Soerjono Soekanto, is that whether or not a law is effective or not is determined by 5 (five) factors:

- The legal factor itself

Regulations regarding the protection of witnesses and victims as well as implementing regulations stipulate that requests for assistance can only be made by witnesses, their families or their legal representatives. The absence of a comprehensive understanding of which through socialization to witnesses makes this law ineffective. Unlike the provision of restitution which has been widely regulated regarding its submission by investigators and/or public prosecutors in every case settlement, but for witnesses there is no regulation that regulates which institution can file other than the witness himself/his family/lawyer.

- Law enforcement factors

Many law enforcement officers do not know about the rights of witnesses in the form of assistance, either medical assistance, psychosocial rehabilitation or psychological rehabilitation. according to Muhajir, SH as the Head of Criminal Investigation at the Temanggung Police because they did not know about the rights of witnesses that could be submitted by investigators, as well as Bekti

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<sup>11</sup>Article 37 Paragraph (4) Government Regulation No. 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims.

Wicaksono, SH., MH as Head of the General Crimes Section at the Temanggung District Prosecutor's Office said the same thing but with the existence of the Act. Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia has had more concrete authority regarding the process of rehabilitation, restitution and compensation, which is regulated in Article 30 C letter c, namely, "to participate and be active in handling criminal cases involving witnesses and victims as well as the process of rehabilitation, restitution, and compensation".

There are no regulations that bind law enforcement officers to carry out requests for assistance for witnesses for the benefit of witnesses

One of the keys to the success of law enforcement is the mentality or personality of the law enforcers themselves.<sup>12</sup>If the law enforcer has a good mentality and personality, even though it is initiative, the request for assistance for the benefit of the witness is still carried out for the benefit of the witness.

- Factors of facilities or facilities that support law enforcement
- Community factor

Lack of public knowledge about legal protections that can be done to protect witnesses, not just victims.

To maximize the implementation of the implementation of assistance for witnesses, the things that must be done are:

- Socialization regarding the provision of assistance for witnesses needs to be carried out in agencies that are in direct contact with witnesses.
- Include a request for assistance for witnesses in the formal requirements of a case file so that without the fulfilment of a formal requirement, a case cannot be submitted to the trial process by the Public Prosecutor.
- Building synergy between law enforcement and the community so that national schemes and strategies to protect witnesses will exist at the district level, not only the responsibility of LPSK at the central level.
- Legal counselling either directly or through print media, social media and electronic media to the public regarding the assistance for witnesses.

#### 4. Conclusion

Witnesses are very important evidence for the evidentiary process in criminal law. Therefore, it is necessary to protect witnesses in order to create a sense of security in giving testimony in the investigation process up to the trial process. The provision of assistance to witnesses has not been effective due to several factors, both from the law itself, which is not binding on law enforcement in applying for assistance to witnesses, because the request for assistance for witnesses is only an initiative. In terms of law enforcement officers, the limited knowledge regarding the provision of legal assistance for witnesses by law enforcers, including investigators, public prosecutors, judges and legal counsel, is a factor in the ineffectiveness of

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<sup>12</sup>Hernawan Dewatana and Ummu Adillah, (2021), "The Effectiveness of Criminal Eradiction on Hoax Information and Fake News", *Law Development Journal* ISSN : 2747-2604 Volume 3 Issue 3, September 2021 (513-520), p. 518

providing assistance, both medical assistance, psychosocial rehabilitation and psychological rehabilitation. The thing that needs to be done for the government should be to make a National Strategy for handling assistance for witnesses so that the provision of assistance for witnesses can be effective for the sake of evidence to seek the material truth of a criminal act. In addition, a more integrative Witness and Victim Protection Scheme must be made, meaning that it is interconnected between agencies that are in direct contact with witnesses. Law enforcers, both investigators, public prosecutors, judges and attorneys must know more about the provision of assistance to witnesses by means of socialization. This is very important because witnesses are very helpful in their duties as law enforcers in seeking material truth according to the objectives of the criminal procedure law.

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