

Enhance Witness Protection for Corruption Eradication Cases of Criminal Law Policy

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Abstract

Witness protection policies in corruption cases need to be optimized because they can be an alternative legal instrument in efforts to eradicate corruption. This shows that the protection of witnesses and victims is an important and urgent legal aspect; this is because the criminal law policy in the process of eradicating corruption places more emphasis on the perpetrators and pays less attention to the witnesses involved in legal investigations. It is necessary to optimize the role of LPSK in criminal law policies, including in providing protection for witnesses in cases of eradicating corruption, all elements of society hope that it will not become an unresolved problem. So far, criminal law policies in efforts to eradicate corruption have placed more emphasis on the perpetrators. Therefore, it is important to carry out legal reforms to the witness protection law in the process of eradicating corruption. It is necessary to optimize the role of LPSK in criminal law policies, including in providing protection for witnesses in cases of eradicating corruption; therefore, it is important to carry out legal reforms to the witness protection law in the process of eradicating corruption. It is necessary to optimize the role of LPSK in criminal law policies, including in providing protection for witnesses in cases of eradicating corruption; therefore, it is important to carry out legal reforms to the witness protection law in the process of eradicating corruption.

Keywords

witness protection; corruption eradication; criminal law policy



I. Introduction

Corruption has become a massive social phenomenon and occurs everywhere. This has been considered an extraordinary crime that threatens the Indonesian economy and hinders national development. All elements of society hope that corruption will not become an unresolved problem. History has proven that almost every country is faced with the problem of corruption (Prodjohamidjojo, 2002). If there is an official name for the anti-corruption law, it is clear that there is a difference between the anti-corruption law and other criminal laws, such as economic crimes. and the law on immigration crimes. There is a word "controversy" that will associate our thoughts, that with the law corruption can be eradicated, even though it has been proven in history that criminal prosecution and criminalization alone will not eradicate crime (Hamzah, 2002).

There were 72,000 thieves hanged in a region of three to four million people, but crime continues to run rampant. According to Moore, violence will not stop crime. To eradicate crime, the causes must be found and eliminated (Boger, 1995). Therefore, crimes such as corruption will not be eradicated or reduced, unless we find the cause, to prevent these crimes.

In the criminal justice process for corruption in Indonesia, there is a corruption law that already has very heavy sanctions and there are rules in the corruption law that threaten the

perpetrators of corruption with the death penalty. However, it has not been able to have a tremendous impact in eradicating corruption in Indonesia. Therefore, law enforcement officers such as the police, prosecutors, and the Corruption Eradication Commission (KPK), face great difficulties in uncovering corruption cases in Indonesia, even though the law has given extraordinary powers. However, to disclose corruption cases, law enforcers still face difficulties.

This is due to the lack of individuals who want to report a corruption case and the process of disclosing corruption cases, especially those involving witnesses, many cases cannot be resolved, because there are no witnesses who can support law enforcement duties. The witness was reluctant to provide information because he received threats, intimidation, and criminalization from the perpetrators (Hikmawati, 2013). Therefore, witnesses have an important position in the criminal justice system, including in the criminal justice system for corruption.

The Corruption Eradication and Witness Protection Law does not specifically explain the protection of witnesses against their role in disclosing corruption cases. Witness protection in the criminal justice corruption process is a matter of criminal law policy. The basic idea of witness protection is to facilitate and strengthen the criminal justice process by providing a sense of security to witnesses in providing information in the criminal justice process. So that a fair trial can be created to achieve material truth. Purba (2019) states that generally there has been a similar opinion among legal experts in interpreting the nature of violating criminal law. Witness protection in criminal justice is also a criminal law issue, so criminal law policies are closely related to witness protection arrangements (Irawan, 2016).

The concept of witnesses in Law 13 of 2006 as amended by Law Number 31 of 2014 needs to be expanded. This can be seen in the formulation of the law on witness protection in the legislature, which prioritizes what can be protected is limited to the witness's family. Article 1 paragraph (7) of the Law explains who is meant by a witness's family, namely a person who has blood relations in a straight line up and down, and a side line up to the third degree, or has a marital relationship with the witness and or a person who has responsibilities. to be witnesses and victims. This formulation is too narrow, the concept that people must relate to not only includes family but can include other people who have the potential to make witnesses not testify if the person is under intimidation (DPR RI, 2006).

According to Marc Ancel, a penal policy is an art that ultimately has a practical goal of enabling the rules of positive law to be better formulated and providing guidance, not only to legislators but also to courts that apply the law and also to law enforcement. court decision. Then A. Mulder argues that the politics of criminal law (*Strafrecht Politiek*) is to determine:

(a) To what extent do the criminal provisions need to be changed or updated,

(b) What can be done to prevent crime,

(c) How the investigation, prosecution, trial, and criminal proceedings should be carried out. The theory of criminal law policy is related to the issue of witness protection in eradicating corruption. If viewed from a theoretical perspective, the study that will be carried out in this research is the issue of witness protection as an alternative instrument for eradicating corruption in Indonesia which is difficult to find a solution to eradicate. By maximizing the protection of witnesses in corruption cases, it is hoped that this can be a solution to maximize the eradication of corruption in Indonesia. Some of the problems that will be carried out in this research are:

(1) the issue of criminal law regulation of witness protection in eradicating corruption,

(2) the issue of the urgency of witness protection in eradicating corruption,

(3) criminal law on witness protection is one of the instruments to eradicate corruption.

To answer the above problems, this article will discuss the urgency of witness protection as an alternative to eradicating corruption. Apart from existing facilities such as penal and non-penal facilities in corruption, it also refers to the theory of criminal law policy in eradicating corruption. So far, the policy of criminal law in eradicating corruption has more emphasis on the perpetrators, this can be seen in the results of previous studies, some studies only examine how the role of witnesses in uncovering criminal acts of corruption can be used as an alternative instrument in eradicating corruption. There is an opportunity to optimize witness protection so that the disclosure of corruption cases in Indonesia will be more optimal.

Regarding witness protection in eradicating corruption, Law no. 13 of 2006 in conjunction with Law no. 31 of 2014 concerning the Protection of Witnesses and Victims, Law no. 31 of 1999 concerning the Eradication of Corruption Crimes, and Law no. 30 of 2002 concerning the Corruption Eradication Commission which is a reference for law enforcers in protecting witnesses in corruption crimes. Meanwhile, the application stage and the execution stage are how law enforcers apply the provisions of Law no. 13 of 2006, Law no. 31 of 1999, and Law no. 30 of 2002 in protecting witnesses and reporters to provide information safely in the judicial process.

II. Research Methods

Methods Protection and Eradication of Corruption in Indonesia

Witness protection is part of the embodiment of a sense of security and is a mandatory right that must be fulfilled. As an illustration, formative criminal law policies are contained in various laws and regulations such as the Criminal Code, Criminal Procedure Code, and certain criminal laws. A criminal law policy that outlines the obligations of witness protection, even though it is included in the scope of witness protection as regulated in the witness protection law. The legal policy of witness protection in the existing law has not accommodated the protection of witnesses in cases of criminal acts of corruption, both in the form of penal and non-penal policies and in the form of granting rights to witnesses which can threaten the position of witnesses and victims, there are special arrangements regarding the protection of witnesses and victims.

Table 1: Witness Protection Law Regulations and Corruption Eradication

law Number	<ul style="list-style-type: none"> Article 5 is given the same rights as the Criminal Procedure Code, in Article 10 it is subject to sanctions, 	<ul style="list-style-type: none"> Given since investigation phase begins.
Law No.31/2006		
Law No.31/2014	<ul style="list-style-type: none"> Article 10, 1. against witnesses, victims, justice collaborators, and whistleblower, can not be prosecuted civil / criminal, except testimony in goodness of purpose, 2. 	<ul style="list-style-type: none"> In article 10, corruptors only given to justice collaborator
Law No.31/1999	<ul style="list-style-type: none"> Article 31 (1) prohibition in mention whistleblower identity Article 35, Article 41 (2) e, community participation 	<ul style="list-style-type: none"> Participating communities are required to have law protection

law No. 20/2001	<ul style="list-style-type: none"> • problem protection 	witness	<ul style="list-style-type: none"> • Does not change the description in Law 31
law 30/2002	<ul style="list-style-type: none"> • Article 15, the obligation of the KPK to provide protection for witnesses and 		<ul style="list-style-type: none"> • The mechanism is not explained

Protection is crucial, even intimidation and threats against witnesses are empirical experiences that often occur (ICW, 2007). Various case reports issued by several parties indicate that the protection of witnesses and victims is a very important issue. Many witnesses and whistleblowers are reluctant to disclose information to law enforcement until before the court due to the lack of guarantees. Especially the guarantee of certain rights or certain mechanisms to testify. The absence of such guarantees has resulted in the reluctance of witnesses to testify in court, both in cases of organized crime and other cases such as corruption, narcotics and gross human rights violations, sexual crimes, human trafficking, domestic violence, and other cases.

Abdul Haris Semendawai further stated that the enactment of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims in Indonesia on July 18, 2006 was a significant development in reforming the criminal law system. Previously, in Indonesia there was no regulation that specifically regulated the protection of witnesses and victims with a systematic procedure, and mandated it to become a particular institution that specifically provided witness and victim protection.

However, in some countries witness protection provides a special mandate to protect witnesses who are intimidated, Law Number 13 of 2006 actually gives a greater mandate to LPSK such as providing support to victims of crime. Protection of witnesses in organized crime cases does not receive adequate support from the law,

In the explanation section of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims which has been amended by Law Number 31 of 2014 is *lex specialis* (special provisions) which regulates legal protection for witnesses and victims. Previously, the arrangements and procedures for the protection of witnesses and victims were contained in several regulations and in several institutions that were given the authority to provide protection. In the explanation of Law no. 13 of 2006 concerning the protection of witnesses and victims stated:

"...to foster community participation in uncovering criminal acts, it is necessary to create a conducive atmosphere by providing legal and safe protection for anyone who knows or finds something that can help uncover criminal acts that have occurred and report them to the law enforcement. It further states.... the whistleblower must provide adequate legal and security protection for his or her report, so that he or she does not feel threatened or intimidated..."

Legal protection regulations for witnesses and victims are *lex specialis*, providing an understanding of the unification of various provisions or procedures for legal protection for witnesses scattered in positive law in Indonesia. Another definition is Law no. 13 of 2006 concerning the protection of witnesses and victims can provide a legal basis for witness protection, but it is not yet strong enough. Regarding amendments to Law Number 13 of 2006 concerning the protection of witnesses and victims, it does not distinguish between protection and assistance for witnesses and victims. In practice in some countries, the implementation of service delivery between the witness protection unit and the crime victim unit is differentiated. The legal basis for witness protection and the unit for victims of crime (victim protection) makes a difference between witnesses, victims or even reporters.

After the enactment of Law Number 31 of 2014, there are two new terms that have not been regulated in Law Number 13 of 2006 concerning the protection of witnesses and victims, namely the terms whistleblower and justice collaborator in collaboration with law enforcement. Before the birth of Law Number 31 of 2014, it was regulated in SEMA Number 4 of 2011 but was very minimal. There are no guidelines that can be used by law enforcement, so the existence of SEMA should be appreciated. SEMA as a transitional legal product, plays a very important role in strengthening the provisions of Article 10 paragraph (2) of Law no. 13 of 2006. At least there are several important things that SEMA can provide in protecting justice collaborators who work together (Edyono, 2011). After the enactment of Law Number 31 of 2014, the protection for witnesses has not been maximized, including witnesses in corruption cases. We can see many witnesses to corruption cases who are still receiving threats, intimidation, and criminalization after the enactment of the law. This condition is not surprising if we hear that someone will be reluctant to be a witness in corruption cases (Setiawan, 2008).

Whistleblower provided for in the protection law. There are four articles that regulate the protection of whistleblowers in general, namely: Article 1 paragraph (4) concerning the meaning of the reporter, Article 5 paragraph (3) concerning the rights of witnesses and victims which also applies to the reporter, Article 10 regulates criminal prosecution, and Article 28 paragraph (3) requirements in providing protection by LPSK. The justice of collaborators in this law is regulated in the same article, although there are rules regarding justice collaborators who work together as regulated in Article 10 A paragraphs (1) - (5). We can see that witness protection arrangements are minimal.

In addition, the issue of witness protection is regulated in the anti-corruption law. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. This explains the concept of witnesses in corruption cases which is a special rule for witness protection contained in this law. In Article 35 paragraph, witnesses are explained as (1) the obligation to be witnesses in cases of corruption, that everyone is obliged to provide testimony as a witness or expert, except for the father, mother, grandparents, siblings, wife or husband, and grandchildren of the defendant. In addition, the obligation to be a witness is regulated in Article 36 which states that the obligation to give testimony as regulated in Article 35 also applies based on work,

Corruption cases cause huge losses, but many corruption cases go unsolved. One of the reasons is the lack of witness testimony as evidence. At present the government is also aggressively aggressively eradicating corruption, we are faced with law enforcement in this corruption case which is quite paradoxical and is still far from a sense of community justice (Zulyadi, 2020). The witness was reluctant to provide information because he could be the target of threats or intimidation from the perpetrators. In fact, the presence of witnesses is very important in the criminal justice process. Therefore, to enforce and actualize the Witness and Victim Protection Agency as a forum for law enforcement in Indonesia, is an activity that cannot be delayed for the law enforcement process and the development of the Indonesian legal community (Soedarso, 2010).

III. Discussion

3.1 The Urgency of Witness Protection in Criminal Acts of Corruption Eradication in Indonesia

In all stages of the criminal case settlement process, from the investigation stage to the evidence stage in court, witness testimony is very important, even in practice it is often a determining factor in disclosing a case, including in corruption cases (Iksan, 2011). The

protection of witnesses in corruption crimes is very important, considering that in a corruption crime, the suspect/defendant or related parties can threaten the witness by using his position. The importance of witness protection for whistleblowers has been stated in Article 31 Paragraph (1) of Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which states that in the stage of investigation and examination in court, witnesses and other persons related to criminal acts of corruption are prohibited from mentioning the name or address of the complainant. It satirically castigates a society characterized by an inadequate educational system, social injustice and corruption (Diakhate, 2019).

Good governance is a prerequisite for the realization of a democratic state that is aspired by all elements of the nation. This will be realized, if the judiciary is held as a principle of justice, which respects human rights values, and is in line with the law enforcement process, including the importance of witness protection. As mandated in Article 29 G Paragraph (1) of the 1945 Constitution which states that "Everyone has the right to protect himself, his family, honor, dignity, and property under his control, so he is entitled to a sense of security and protection from threats to do or not to do something called human rights".

Law No. 8/1981 on the Criminal Procedure Code has not provided sufficient certainty of legal protection to witnesses who report cases of criminal acts of corruption (rapporteurs) as their juridical strength, in Article 50 to Article 68 of the Criminal Procedure Code only regulates the protection of suspects or defendants for be accused or accused protected from various possible human rights violations. In fact, witnesses are the most important asset in uncovering difficult corruption cases, because witnesses can obtain preliminary evidence that is used as an initial process to uncover further corruption cases.

The existence of witnesses in corruption cases is a scary thing, so law enforcers have difficulty getting information from witnesses. The most frightening thing for a witness in uncovering a corruption case is the possibility that a witness could become a suspect (criminalization) such as false accusations and defamation. We can see that based on the documents collected by ICW and ELSAM, in 1999-2006, there were at least 39 witnesses and whistleblowers who were reported for their testimony with accusations of defamation and threats (Wisnubroto, 2007) and many more cases after that period. In August 2017, the print and electronic media were shocked by the news of the death of Johannes Marliem as one of the key witnesses to the e-KTP corruption case and his alleged death related to his presence as a witness to a corruption case.

We can see that all norms in the Witness and Victim Protection Act should be included in providing protection for witnesses, but threatening witnesses. This can be considered in Article 10 Paragraph (2) of Law No. 13 of 2006, "A witness who is also a defendant in the same case cannot be excluded from criminal prosecution if it is proven legally and convincingly. However, his statement can be used as a judge's consideration in easing the criminal sanctions imposed". Although it cannot be said to threaten the existing law, it can be considered minimal to accommodate witness protection, especially in efforts to eradicate corruption. has swung too far, at least it can illustrate that the criminal justice system in terms of eradicating corruption focuses more on suspects, defendants, convicts.

3.2 Analysis Policy to Facilitate Corruption Eradication in Indonesia

Criminal law policy is part of legal politics, but the study of criminal law policy is more focused on criminal law. One form of criminal law politics is to design and stipulate regulations on witness protection (Yuhermansyah, 2012). Criminal policy is a rational effort to eradicate crime. Is part of law enforcement policy, which is part of social policy, community or state efforts to improve people's welfare.

So far, the attention of policy makers and law enforcement has focused more on the perpetrators of criminal acts, but very little on witnesses and reporters who play a role in uncovering cases. In fact, there is already a law that specifically regulates the protection of witnesses, namely Law no. 13 of 2006 concerning the Protection of Witnesses and Victims. In consideration of the law, it is stated that this law is needed because of the importance of witness and victim testimony as evidence in seeking and finding clarity about criminal acts committed by perpetrators, while law enforcers often face difficulties in presenting witnesses because of threats, both physical and psychological threats from certain parties.

Before the law on the protection of witnesses and victims was used legally, the policy of witness protection for certain crimes had been regulated in various laws and regulations. In this regulation, there are different parties who need protection. In human rights violations, for example, the protection of witnesses and victims is regulated in Article 4 of Government Regulation (PP) no. 2 of 2002 on Procedures for the Protection of Victims and Witnesses of Serious Human Rights Violations (implementation of the provisions of Article 34 paragraph (3) of Law Number 26 of 2000 concerning Human Rights Courts), 34 Law Number 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, becomes law). Especially in the case of eradicating corruption, there is no special regulation regarding the protection of witnesses in corruption cases.

Especially for corruption cases, witness protection is only regulated in Article 41 paragraph (2) letter e of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, states that "people who participate in assisting the prevention and eradication of criminal acts of corruption can obtain legal protection, in the event that they are asked to attend the investigation process in court as a reporter, witness, or expert witnesses that are relevant to the provisions of the applicable laws and regulations".

In addition, Law Number 30 of 2002 concerning the Corruption Eradication Commission also regulates the protection of witnesses. Article 15 states that "the Corruption Eradication Commission is obliged to provide protection to witnesses or reporters who submit reports or provide information on corruption cases". The implementation of the regulation on public participation in the prevention and eradication of corruption is contained in PP No. 71 of 2000 concerning Procedures for Implementing Community Participation and Awarding in the Prevention and Eradication of Corruption, it is not related to the issue of witness protection. Article 5 paragraph (1) of the PP states that "every person, community organization, or non-governmental organization, which provides information regarding alleged perpetrators of corruption, however, this protection is not provided if there is sufficient investigative evidence to strengthen the involvement of the reporter in the reported corruption case. In addition, it is also not regulated if the complainant is the perpetrator in other cases.

A. Mulder stated that the criminal justice policy (Strafrecht Politiek) is the main policy to determine: (a) the extent to which the appropriate criminal provisions need to be changed or updated, (b) What can be done to prevent criminal acts from occurring (c) How is the investigation, prosecution, judicial and criminal proceedings must be carried out. The problem of witness protection in eradicating corruption can be seen from the extent to which the provisions of criminal law regulations can be changed, so that they can accommodate the problem of witness protection in eradicating corruption, so as to guarantee the existence of witnesses and can reveal many things. Corruption cases from previous situations that are difficult to uncover. Furthermore, A. Mulder stated that the policy of criminal law is related to what can be done to prevent the occurrence of criminal acts. Related to the problems studied in this study, it can be seen that one of the ongoing corruption eradication efforts in

Indonesia, then one way that can be done is to optimize witness protection in corruption cases. Optimizing witness protection can be the most effective solution to eradicate corruption in this country. The third opinion of the theory of criminal justice policy according to A. Mulder will be achieved if the previous two points can be implemented optimally. Optimizing witness protection can be the most effective solution to eradicate corruption in this country. The third opinion of the theory of criminal justice policy according to A. Mulder will be achieved if the previous two points can be implemented optimally. Optimizing witness protection can be the most effective solution to eradicate corruption in this country. The third opinion of the theory of criminal justice policy according to A. Mulder will be achieved if the previous two points can be implemented optimally.

In relation to the theory of criminal law policy above, various existing laws and regulations governing witness protection are considered inadequate, so it is urgent to reform the law that specifically regulates witness protection in eradicating corruption. Articles 5 to 10 of the law on the protection of witnesses and victims stipulate that various rights can be granted to witnesses and victims to provide a sense of security in providing information in every criminal justice process.

These rights include:

- a. obtain protection for their personal, family, and property, as well as being free from threats related to the testimony they will or have given;
- b. participate in the process of selecting and determining the form of safe protection and support;
- c. provide information without being under pressure;
- d. got a translator;
- e. free from trick questions;
- f. obtain information on the development of the case;
- g. obtain information about court decisions;
- h. knowing that the convict was released;
- i. I.Me. get a new identity;
- j. getting a new place of residence;
- k. get reimbursement of transportation costs as needed;
- l. obtain legal advice; and receive temporary living expenses until the end of the protection period.

The rights in the witness protection law above are not sufficient, so a systemic mechanism is needed so that witness protection in the context of eradicating corruption can be realized, so that it can uncover many corruption cases that are difficult to uncover. There must be an improvement in the rights of witnesses. The rights of witnesses must be regulated in detail, a distinction must be made between the rights granted to witnesses in general without regard to the conditions, and the rights granted in special circumstances. In the protection procedure, Articles 28-32 must be more detailed and complete. This article only explains how witnesses obtain protection, engagement, and termination of protection, then provisions for witnesses to apply for support.

There are several limitations in providing witness protection, as referred to in Article 28, protection is provided by considering: (a). The importance of witness and victim testimony; (B). The level of threat that endangers witnesses and victims; (C). The results of the analysis of the medical team or psychologists on witnesses and victims; (D). Records of crimes ever committed by witnesses and victims. Regarding the important position of witnesses in disclosing corruption cases in the criminal law enforcement process, it is important to eliminate the factors that make them reluctant to become witnesses. As a consequence, there is a need for legal guarantees that can provide protection and fulfill the interests of witnesses in the criminal justice system. The realization of a criminal law policy

is not only through an approach to perpetrators of corruption, but also to witnesses of corruption cases. The existence of a witness protection law which mandates the protection of witness rights to an institution called LPSK (Witness and Victim Protection Agency), can carry out its duties and authorities if there is a request from a witness, it must be maximized. Protection of witnesses of corruption crimes who are considered to have an important role in uncovering a corruption case.

IV. Conclusion

The development of regulations on witness protection in corruption cases is inseparable from the stand of witnesses in the criminal justice system. Law enforcers in seeking and finding clarity about criminal acts committed by perpetrators, they often face difficulties due to various reasons, such as witness fear, worry, or even inability (lack of funds, depression, injury or even death). Therefore, it is necessary to protect witnesses which is very important in eradicating corruption. In Indonesia, before the enactment of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, many studies have been carried out because they have become crucial, so the practice of intimidation and threats against witnesses is an empirical experience which often happens.

In its development, the regulation of witnesses and reporters in the Law on the Protection of Witnesses and Victims, Law Number 13 of 2006 does not recognize what is meant by whistleblowers and justice collaborators, including before the birth of this Law, Law Number 13 of 2006 provides a basis for the law for LPSK to provide protection only to witnesses and victims. After the enactment of Law 31 of 2014 concerning Amendments to Law Number 13 of 2006,

Then the terms whistleblower and justice collaborator are used, but do not optimally protect the presence of witnesses in the criminal justice system. carrying out legal reforms to the witness protection law and expanding the witness protection mechanism for whistleblowers and justice collaborators in corruption cases, strengthening the role of LPSK, strengthening the authority of LPSK which is no longer passive but must be active, expanding protection services for whistleblowers and justice collaborators, increasing cooperation and institutional coordination, awarding and special handling not only for justice collaborators but also whistleblowers, and then regulations on the formation of LPSK representatives in every province in Indonesia. Thus, the presence of witnesses in corruption cases can be maximized.

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