

# INTERNATIONAL LEGAL STUDY ON THE MECHANISM OF WITNESS AND VICTIM PROTECTION INSTITUTIONS IN INDONESIA AND THE UNITED STATES (COMPARATIVE STUDY)

**GATRI PUSPA DEWI\***

Master of Law, Universitas Pendidikan Denpasar, Indonesia.

\*Corresponding Author Email: puspadewijee@gmail.com

## Abstract

The true essence of the existence of the Witness and Victim Protection Institution is a representative form of the constitutional mandate found in Article 28G, Article 28I, and Article 28J of the 1945 Constitution of the Republic of Indonesia. These constitutional provisions serve as a juridical and legitimate basis for implementing legal regulations aimed at providing guarantees for the protection of rights. Human rights towards witnesses and victims encompass freedom from fear and threats when disclosing a criminal act, as well as increased efforts to thoroughly expose criminal acts, especially organized transnational crimes. Based on this, it is evident that LPSK is an important foundation and an extension of the hands of small communities awaiting justice and protection. It plays a crucial role in unveiling the truth and ensuring justice for witnesses and victims within the Indonesian criminal justice system. Moreover, LPSK serves as a vital instrument in upholding human rights, including non-derogable rights, thereby contributing to the realization of a peaceful social order. This research is qualitative in nature, utilizing normative juridical methods or a statutory approach (statute approach) and comparison (comparative approach). The results of this study encompass three main discussions: firstly, the implementation of witness protection policies and Law Number 31 of 2006 concerning the protection of Witnesses and Victims; secondly, a comparison of LPSK in Indonesia with LPSK in the United States; and thirdly, the problems faced by these two institutions in carrying out their duties, specifically in the protection of witnesses and victims.

**Keywords:** Witness and Victim Protection Agency, Guarantee of Protection, Human Rights, Comparison, Justice. Witnesses and Victims.

## 1. INTRODUCTION

The existence of law is urgent and crucial (Marzuki & Sh, 2021). It is important to remember that the function of the law is to protect the interests of humanity from various disturbances or losses, both physical and moral, caused by crime. Society harbors significant expectations for realizing the human ideals of legal justice, namely ensuring a safe, peaceful, and prosperous society (Suleman, 2016).

However, this hope is certainly not easy to realize in the face of increasing crime rates. Still, with an independent criminal justice system as stipulated in Article 1, Paragraph 1: Judicial power is judicial power, there is potential for a country to enforce case law and precedents based on Pancasila and the 1945 Constitution of the Republic of Indonesia, all within the framework of upholding the supremacy of law in the Unitary State of the Republic of Indonesia (Republik Indonesia, 2009).

According to Muradi, the criminal justice system must be consistent with its spirit and scope. Structural synchronization, in the form of the harmonization of criminal justice administration institutions, substantive (substantive synchronization) concerning existing positive law, and cultural (cultural synchronization) through the internalization of complete views and attitudes, can also be synchronous. Philosophy and Philosophy Underlying the Functioning of the Criminal Justice System (Diningrat, 2017).

Even though the criminal justice system is normatively based on statutory regulations, in practice, there are still several problems. In criminal proceedings, witnesses and victims are often positioned only as parties providing information (evidence) in uncovering a criminal act. However, their rights are not extensively regulated in the Criminal Procedure Code (KUHAP), even though being a witness in a criminal act can threaten the existence of witnesses and victims. Based on this, witnesses and victims need to receive special treatment and rights, considering that the information they convey can threaten their safety (Sumadikara, 2016).

In Indonesia itself, regulations regarding legal protection for witnesses and victims are starting to receive attention with the establishment of the Witness and Victim Protection Agency (LPSK), based on Law Number 13 of 2006 concerning Witness and Victim Protection. In the context of improving the witness and victim protection law, Law Number 31 of 2014 was enacted, amending Law Number 13 of 2006. The birth of this law was an effort to guarantee the fulfillment of rights and provide a sense of security to witnesses and victims involved in criminal case trials (Evand Hadi & Chepi Ali Firman Z, 2022).

However, it cannot be denied that Law Number 31 of 2014 still has several weaknesses. One of them is Article 5(2), which explains that the protection of witnesses and crime victims is guaranteed only in certain (limited) cases. Another obstacle faced by LPSK is the lack of budget and human resources, resulting in suboptimal performance, especially in regional services. This indicates weaknesses related to LPSK, both in terms of status, performance, and the laws that regulate it. Moreover, even though LPSK's position is crucial in the Indonesian criminal justice system, this institution is not included in the components of the Indonesian criminal justice system (Julianto, 2020).

Nevertheless, witness and victim protection services in other countries are still related to the LPSK conception in Indonesia. In some countries, the approach to witness and victim protection is different and is operated in different institutions, for example in the United States. So, indirectly, LPSK in Indonesia also refers to the protection of witnesses and victims in America (Panjaitan & Putri, 2017).

Among them, there are several things that Indonesia can emulate from American witness and victim protection programs, such as the Victim Trust Fund and Victim Impact Statement. These two things should be encouraged to be included in discussions regarding the revision of the Criminal Code and Criminal Procedure Code. However, unlike in Indonesia, the context of legal protection for witnesses and victims is carried out in the same institution, even though witnesses and victims have rights that need to be protected with different needs, this results in less than optimal protection for witnesses and victims, so there is no Surprisingly, most of the

protection requested is witness protection. From the description of the problems in the context of legal protection for witnesses and victims in the two countries, the author is interested in researching "Comparison of the Mechanisms of Witness and Victim Protection Institutions in Indonesia and the United States (Comparative Study)"

This research is based on the background understanding that has been described previously. The problem formulation is designed through research questions that focus on two main aspects. First, the research focuses on how to protect witnesses and victims in Indonesia and America. Second, this research aims to identify the differences and similarities between the Witness and Victim Protection Agency (LPSK) in Indonesia and America (Rauf et al., 2022).

To achieve the research objectives, three specific objectives were outlined. First, the research aims to understand in depth the implementation of protection policies for witnesses and victims in the criminal justice system in two countries, namely Indonesia and America. Second, the research also aims to compare the context of witness and victim protection in the two countries. Finally, the third objective is to identify the obstacles faced by witness and victim protection agencies in Indonesia and America in their efforts to guarantee the rights of witnesses and victims.

By detailing the objectives of this research, it is hoped that the research results can provide a more holistic understanding of the implementation of witness and victim protection policies, as well as the differences and similarities between LPSK in Indonesia and America. This understanding provides a solid foundation for overcoming obstacles that may arise in safeguarding the basic rights of witnesses and victims in the context of the criminal justice systems of both countries.

## 2. METHODS

This research falls under the category of empirical legal research, relying on factual occurrences within the Witness and Victim Protection Agency (LPSK) or the environment related to the implementation of legal protection policies for witnesses and victims in criminal justice processes in Indonesia and America. The study aims to explore how witnesses and victims can obtain protection, as well as to identify the obstacles faced by LPSK in providing legal protection for witnesses and victims.

The data sources employed include primary legal materials, specifically legal documents such as related laws and regulations. Notably, Law No. 31 of 2014, which amends Law No. 13 of 2006 concerning witness and victim protection, and other regulations relevant to the subject matter of this research. Secondary legal sources, comprising books, papers, scientific works, and various other legal writings that offer additional insights into primary legal materials, are also utilized.

The research employs a qualitative descriptive method, wherein data is classified according to the researcher's identified problems. The classified data is then systematically organized and analyzed to form the basis for drawing conclusions.

### 3. RESULTS AND DISCUSSION

The Witness and Victim Protection Agency (LPSK) is an institution established for the protection of witnesses and victims, as stipulated in Law Number 13 of 2006 concerning the protection of witnesses and victims, enacted on 11 August 2006. According to Government Regulation of the Republic of Indonesia Number 35 in 2020, the Witness and Victim Protection Agency (LPSK) is tasked and authorized to provide protection and other rights to witnesses and/or victims as per the provisions of the Law concerning the Protection of Witnesses and Victims.

As is well-known, witnesses and victims play a crucial role in ensuring a fair and objective decision in a case before it goes to trial. The significance of their role makes witnesses and victims susceptible to threats, highlighting the need for protection that guarantees their safety and well-being. The necessity for regulation and legal protection for witnesses and victims can be justified from a sociological perspective, as all citizens in a country are expected to participate fully in social life. Moreover, society itself is regarded as a "System of Institutional Trust."

The Witness and Victim Protection Law specifies that LPSK is an independent institution but bears responsibility to the President. The Witness and Victim Institution holds the authority to provide protection and rights to witnesses and victims as per the regulations set forth by the law. Law Number 13 of 2006 concerning Witness and Victim Protection was established to instill a sense of security for every witness or victim involved in providing information throughout any criminal justice process.

The objective is to provide a clearer explanation of the mechanisms and performance of LPSK in executing its duties and authority. Based on Law Number 13 of 2006, all efforts to fulfill rights and provide assistance to ensure the security of witnesses or victims must be implemented by LPSK or other institutions in accordance with the provisions of this law.

#### 3.1 Witness and Victim Protection Agency in Indonesia

Considering the application of Law No. 13 of 2006, LPSK was formed, which is known as an institution tasked with and authorized to provide protection and other rights to witnesses and/or victims.

##### 3.1.1 The subject of protection from LPSK

The LPSK service itself is then mapped into several subjects that will be given special services and protection, namely: (Witness) as a person who can provide information for investigation, inquiry, prosecution, and examination at a court hearing regarding a criminal act that he heard, he saw for himself, and/or experienced it for himself, including a person who provides information related to a criminal case even though he did not hear it himself, did not see it himself, and did not experience it himself, as long as the person's statement is related to a criminal act (Pribadi, 2018). Witnesses are divided into several types, including aggravating witnesses, mitigating witnesses, perpetrator/Crown/Justice collaborator witnesses, and expert witnesses. Then (victim): People who experience physical, mental, and/or economic loss

resulting from a criminal act. And there are (perpetrator witnesses): Suspects, defendants, or convicts who cooperate with law enforcement to uncover a criminal act in the same case. Then (reporter): the person who provides reports, information, or information to law enforcement regarding criminal acts that will, are being, or have occurred. The last (expert): is a person who has expertise in a particular field that is needed to shed light on a criminal case for investigation, prosecution, and examination in court.

### **3.1.2 Protection Program provided by LPSK:**

In this regard, LPSK has several protection programs, including:

- a. **Physical Protection:** Security and escort, placement in a safe house, obtaining a new identity, medical assistance, and giving testimony without appearing directly in court, psycho-social rehabilitation assistance
- b. **Procedural Protection:** Assistance, getting a translator, getting information about case developments, reimbursement for transportation costs, getting legal advice, assistance with temporary living costs until the protection deadline, and so on by the provisions of Article 5 of Law No. 13 of 2006.
- c. **Legal Protection:** Witnesses, Victims, Perpetrator Witnesses, and/or reports that will be, are being, or have been given unless the testimony or report is not given in good faith.
- d. **Medical, Psychological and Psychosocial Assistance:**
  - **Medical assistance:** Assistance provided to restore the victim's physical health, including carrying out arrangements in the event of the victim's death, for example processing the body until the funeral
  - **Psychological Rehabilitation:** assistance provided by psychologists to victims suffering from trauma or other mental problems to restore the victim's mental condition.
  - **Psychosocial Rehabilitation:** all forms of psychological and social services and assistance aimed at helping to alleviate, protect, and restore the victim's physical, psychological, social, and spiritual condition so that they can carry out their social functions again normally, among other things LPSK seeks to improve the quality of life of the victim by collaborating with relevant authorized agencies in the form of assistance in providing clothing, food, shelter, assistance in obtaining employment, or assistance in continuing education.
- e. **Facilitation of *Restitution and Compensation***

Restitution is compensation given to the victim or his family by the perpetrator or a third party. Apart from that, compensation is compensation given by the state because the perpetrator is unable to provide full compensation for the losses which are his responsibility to the victim or his family.

Republic of Indonesia government regulation Number 7 of 2018 concerning the provision of compensation, restitution, and assistance to witnesses and victims. Article 2 paragraph (2) states: "Applications to obtain compensation as intended in paragraph (1) are submitted by the victim, their family or their attorney." Furthermore, article 3 states: "Submission of requests for compensation can be carried out during investigations of serious human rights violations or before the demands are read out." In article 4 it states:

a. The application for compensation as intended in Article 3 contains at least:

- Applicant's Identity
- Description of serious human rights violations
- Identity of perpetrators of serious human rights violations
- A description of the actual losses suffered, and
- The form of compensation requested.

Article 19 paragraph (1) PP Number 7 of 2018, states: "Victims of criminal acts have the right to receive restitution in the form of Compensation for losses for wealth or income, compensation for losses incurred as a result of criminal acts, and/or reimbursement for medical and/or psychological treatment costs.

### **3.1.3 LPSK Protection Mechanism for Witnesses and Victims**

In article 29 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of witnesses and victims, it reads:

a. The procedures for obtaining protection as intended in Article 5 are as follows:

- 1) The witness and/or victim concerned, either on their initiative or at the request of an authorized official, submits a written request to the LPSK.
- 2) LPSK immediately examines the application as intended in letters A, and
- 3) The LPSK decision is given in writing no later than 7 (seven) days after the application for protection is submitted.

Meanwhile, the LPSK protection mechanism for witnesses and victims outside the region is the same as the mechanism provided for witnesses and victims in the center (capital city). What makes the difference is the LPSK's range and handling speed, considering that the LPSK is still at the center. However, LPSK will consider accelerating the handling of witnesses and victims who are in danger and need immediate protection in the area. This handling is carried out by LPSK in collaboration with other related agencies in the regions which are the LPSK network to be able to provide temporary and fast protection according to what is needed by Witnesses and Victims in the region (Sujarwo, 2020).

### **3.2 Implementation of Witness and Victim Protection in the United States**

The regulatory principles implemented by LPSK in Indonesia can refer to the protection of witnesses and victims in America. Where America carries out protection for crimes at the federal or state level carried out by the US Marshal agency.

The United States Marshals Service (USMS) is a federal law enforcement agency in the United States. The USMS is a bureau within the US Department of Justice, operating under the direction of the Attorney General, but serving as the enforcement agency of the United States federal courts to ensure the effective operation of the judiciary and the integrity of the Constitution.

It is the oldest US federal law enforcement agency, created by the Judiciary Act of 1789 during the presidency of George Washington as the "Office of the United States Marshal". USMS as it stands today was founded in 1969 to provide guidance and assistance to US Marshals throughout the federal judicial districts (Tuage, 2013).

The Marshals Service in carrying out its duties is responsible for the protection of judges and other judicial personnel, administration of fugitive operations, management of criminal assets, operation of the United States Federal Witness and Prisoner of Justice Protection Program and Transportation System, execution of federal arrest warrants, and protection of senior government officials through Office of Protective Operations.

The Marshals Institute is an extension of the Federal Court in the US. Therefore, this agency must also ensure the security of (court actors) in 400 court facilities spread across 94 federal court jurisdictions. where they also have a mission to protect the judicial process in the United States. There are 22,000 federal judges and 5,000 federal prosecutors who must be protected, and the Marshal agency is quite successful in carrying out its authority to arrest fugitives (Nugraha & Zakaria, 2022).

The Marshals Service is responsible for apprehending wanted fugitives, providing protection for the federal judiciary, transporting federal prisoners, protecting endangered federal witnesses, and managing assets seized from criminal enterprises. The Marshals Service is responsible for 55.2% of federal fugitive arrests. Between 1981 and 1985, the Marshals Service conducted Fugitive Investigation Strike Team operations to initiate arrests of fugitives in certain districts. In 2012, US police arrested more than 36,000 federal fugitives and released more than 39,000 fugitive warrants. One of the keys to the success of the witness protection forum in the United States is that the process is carried out in secret. "In protecting witnesses, the Marshals Service is very selective.

For witnesses who are highly anticipated and who receive dangerous threats, the Marshal Service often even presents the witness with new personal evidence and relocates him to a new location. They are given financial donations such as houses, living expenses, medical services & vocational training so that they can later work. It is an honor for the Marshal Service that so far none of the witnesses handled have been injured or killed.

On this occasion, the United States has the main protection program, namely the emergency witness assistance program managed by the prosecutor's office, the protection scheme run by the US Marshal Service, and legal protection and protection in court. Meanwhile, in the context of victim protection in the United States, there are 3 things for victims that are basic in the victim protection program, namely the right to security and safety, the right to information, and the right to participation. The United States implements a witness and victim protection program based on the Witness Protection Act of 1984 (Witness Security Reform Act of 1984

In this case, the person carrying out the protection of witnesses is the witness protection program unit, which is under the auspices of the Department of Justice in the criminal division, with the name of the institution, namely the law enforcement operations office, special unit for witness protection. In carrying out its activities, the Witness Protection Unit enforcement operations office unit has working relationships with other institutions, namely the public prosecutor or other investigative agencies, the attorney general's office, the US Marshall Service or other security units, the FBI, the Bureau of Prisons, the courts, the Immigration Office and Naturalization and the last one is the state government.

The 1984 Witness Security Reform Law regulates the working relationship between the special witness protection unit and other institutions with the pattern of providing program supervision or control functions by the witness protection unit by integrating it with the duties and functions of other existing institutions. As follows:

1. Special unit for witness protection. Organizes, supervises approves, and determines requests for witness protection
2. Public prosecutors and other investigative bodies. Carrying out requests for witness protection, and preparing administrative files.
3. Bureau of Prison Supervise and organize witnesses in detainee or convict status and prepare administrative files.
4. The court makes determinations and orders regarding the release of detainees participating in the witness protection program.
5. Immigration and Naturalization Office - Prepare documents for the protection of illegal aliens - Provide approval to investigative agencies.
6. State Government - Paying funding for local witness protection - Collaborating with public prosecutors in enacting witness protection laws.
7. US Marshal Service - Conducts assessments of witnesses who will be included in the protection program. - Protect witnesses. - Protect in urgent situations.
8. Attorney General Obtain and evaluate all information provided regarding witness participation in the protection program. Make a written assessment of the risks that may be accepted by a community where the witness will be relocated (Source: ELSAM)



### **3.3 LPSK equality in providing protection assistance or fulfilling rights between Indonesia and the United States**

Among them are the principles of law enforcement and the application of Indonesian and American legal norms that are similar as stated in Article 5 of Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, including:

- a. obtain protection for personal security, family, and property, and be free from threats related to testimony that will be, is being, or has been given
- b. Giving a new identity
- c. Free from Discrimination
- d. Providing restitution and compensation
- e. Providing a Safe Home
- f. Protection from ensnaring questions
- g. Identity kept confidential

On this occasion, the principle of rights granted by the State is as stated in Article 1 paragraph (4) and (5) of the Government Regulation of the Republic of Indonesia Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. Compensation is compensation for losses. which is given by the State because the perpetrator is unable to provide full compensation for the losses that are his responsibility to the Victim or his Family. Restitution is compensation given to the victim or their family by the perpetrator or third party. is the same as the principle of law enforcement in the United States where the American State also implements a system of providing restitution and compensation to witnesses victims and parties injured in a legal incident. (Nasty & Lesmana, 2023)

### **3.4 The United States Federal Witness Protection Program (WPP)**

The United States Federal Witness Protection Program (WPP), also known as the Witness Security Program or WITSEC, is a witness protection program codified through 18 US Code § 3521 and administered by the Department of Justice.

United States Judiciary and operated by the United States Marshals Service designed to protect threatened witnesses before, during, and after trial.

US Marshals conduct drills to safeguard protected witnesses Some states – California, Connecticut, Illinois, New York, and Texas – and Washington, DC, have their witness protection programs for crimes not covered by the federal program. State-run programs provide less extensive protection than federal programs, in part because state governments cannot issue federal documents, such as social security cards, that verify the new identity of protected witnesses.

### **3.5 Form of protection for witnesses and victims in America**

Form of protection for witnesses, victims, and their families is that in the United States witness protection is provided for 24 hours as long as the witness is still in a condition that has a tendency or high level of threat or danger, including protection while the trial has not yet been held, when the witness giving testimony in court and several, not disclosing the status of witnesses who are in the protection program for detainees who are asked to be witnesses or requesting witnesses, protection for the safety of themselves and their families, protection of new identities accompanied by authentic documents, video surveillance, protection on the economy of witnesses and their families, providing compensation and restitution, implementing witness protection (Mohd. Yusuf DM et al., 2023).

### **3.6 The mechanism for providing protection in the United States for witnesses and victims**

In the United States, the principles are based on the Witness Security Reform Act of 1984, and the Witness Protection Program Unit, and are under the auspices of the Department of Justice in the criminal division. This unit, in its enforcement operations regarding witness protection, has a working relationship with institutional institutions, namely public prosecutors or agencies other investigations. Attorney General, US Marshal Service or other security units (FBI, Bureau of Prisons, Courts, Office of Immigration and Naturalization, and finally the state government.

In this case, if the provision of witness protection is an urgent situation that requires an immediate response from the Enforcement Operations office, then a verbal application to obtain approval by the head office official, the application can be accepted without a letter of application, but in confirmation of the application and supporting information. related matters must be submitted to the Enforcement Operations Office in writing after approval. The information submitted will be kept confidential or will not be disseminated without obtaining approval from the authorities, then the request must be submitted to the US District Attorney where the investigation will be carried out by the prosecutor after approving the request and the Enforcement Operations Office has approved then it will then be submitted to the US Marshals Service or Bureau of Prison for a court order, the Assistant US Attorney must obtain a court order confirming the protection that will be provided by the US Marshals Service or Bureau of Prison.

Apart from that, the attorney general will make a written statement about the dangers that may be posed to them, so that when the level of danger that will be posed has been investigated, the attorney general will make a memorandum of agreement or some kind of MoU which provides a level plan for the protection program. Like the consequences for witnesses when they enter the protection program, their status becomes anonymous (without identity) which aims to ensure that the witness is no longer known to people who could threaten the safety of the witness and his family.

Everything given to witnesses is the result of cooperation from various government agencies in the United States such as the US Marshals Service or the Bureau of Prisons and this program must be carried out taking into account the right time based on confidentiality.

### **3.7 Differences in the implementation of LPSK regulations in protecting witnesses and victims compared to the United States.**

In carrying out its duties, the United States has an Enforcement Operations Office which must provide several things, including:

1. Decent housing
2. Subsistence Costs of \$60,000/year
3. Assist witnesses in finding decent work.
4. protect authentic identity documents for witnesses and their family members who are during the program
5. Arrange for counseling needed by witnesses from psychologists, psychiatrists, and social workers during the protection period
6. Apart from that, for protected witnesses, whenever undergoing trial, pre-trial conferences, or in dangerous areas, the US Marshal's Office is authorized to provide financing and lodging, transportation costs, and other costs. In this case, the US Marshal's Office will coordinate and notify the award.

### **3.8 Office of Protective Operations**

The United States has The Office of Protective Operations (OPO) The Office of Protective Operations (OPO) is the leading physical protection specialist of the United States Marshals Service. OPO provides subject matter expertise, guidance, and direct action support to district offices on high-risk processes and physical protection operations. This OPO is national, covering all twelve federal jurisdictions across the country, with the ability to project globally.

### **3.9 Special Operations Group or The Special Operations Group (SOG)**

America's Special Operations Group (SOG) was created in 1971 and is a specially trained and highly disciplined tactical unit of the Marshals Service. This is an independent response team capable of responding to emergencies anywhere in the US or its territories. Most deputy marshals who volunteer to become SOG members serve as full-time deputies in Marshals Service offices across the country, and they remain on call 24 hours a day. SOG also has a small, full-time operational cadre stationed at the Marshals Service Tactical Operations Center at Camp Beauregard, where all deputies undergo extensive and specialized training in tactics and weapons.

### **3.10 Obstacles in Implementing Witness and Victim Protection Policies**

In this case, to assess the existing obstacles or constraints can be seen from the framework of thinking provided by Friedman, namely:

1. Substance (Legal Substance)

From the legal substance (Substance) of LPSK in Indonesia, it is specifically needed about a law that regulates norms to provide legal certainty regarding the mechanism for providing safe

houses or Save Houses that will be given to witnesses and victims during the protection period.

## 2. Structure (Law Enforcement Structure)

From the LPSK's Law Enforcement Structure, improvements are still needed such as human resources and capacity building to improve the strength of the Witness and Victim Protection Agency (LPSK) (capacity building) is a process to increase the ability of individuals, groups, organizations, communities or citizens to analyze their environment. Identify problems, issues, & needs, & opportunities. Formulate strategies to overcome these problems & needs to take advantage of relevant opportunities. Design an action, and collect & use it effectively, & based on sustainable resources to implement, monitor, & evaluate the action plan, and utilize feedback as a lesson

Then, cooperation with other related institutions is not yet optimal. Law Number 13 of 2006 already regulates Article 36 paragraph (1) regarding cooperation with related agencies, which reads: "In implementing the provision of protection and assistance, LPSK can cooperate with relevant authorized agencies". However, empirical facts in the field show that cooperation with related agencies is not as easy as one might think, and there are still many paths that must be followed. This greatly affects the speed of protecting witnesses and victims who are already experiencing a crisis, especially making it easier to protect in collaboration with other agencies in the region.

Like giving a new identity to a witness. It is still difficult for LPSK to implement it because the existing regulations are not yet complete. Giving a new identity is not easy. There are diplomas, marriage certificates, etc. that must be changed. The problem is, relevant agencies such as the Ministry of Home Affairs will admit that changing the data is very time-consuming

## 3. Culture (Legal Culture)

From a legal culture perspective, society, especially Indonesia. Law Enforcement Paradigm in Responding to the Witness & Victim Protection Law, in this case, the problem of the mindset or perspective of law enforcers who consider criminal justice to be everything, is often found in every criminal justice process, even though the witness & and victim protection law uses the Criminal Procedure Code.

Furthermore, LPSK is considered not the only forum that has the right to protect witnesses and victims. Apart from the Criminal Procedure Code which is still considered the highest among law enforcers in protecting witnesses and victims, the police also have the right to protect witnesses and victims, this is another obstacle to the performance of the LPSK which should be the LPSK as the only forum that has the highest right to protect witnesses and victims, for example, the Corruption Eradication Commission (KPK) which is the spearhead of eradicating corruption in Indonesia.

### **Example of LPSK case:**

According to data obtained by the Witness and Victim Protection Agency (LPSK) through its 2020 work report, the number of applications for corruption cases to the LPSK was 48 applications, whereas in 2019 there were 72 applications. Corruption applications were 50

percent in 2020 with the number protected being 53. Cases of sexual violence against women decreased by 31.75 compared to the previous year. There were only 245 applications in 2020, while in 2019 there were 359 applications.

Torture cases decreased by 52 percent in 2020 when compared to 2019. However, there were cases that the government responded to by forming a Joint Fact Finding Team (TGPF) formed by the Coordinating Minister for Political, Legal, and Legal Affairs, Moh Mahfud MD, namely in the case of the torture of Pastor Yeremiah in Intan Jaya Papua.

According to LPSK Deputy Chair Edwin, violence in 2020 was quite high in applications from victims of violence such as abuse, violent theft, and domestic violence, reaching a total of 208 applicants.

Of the many requests, one example that submitted a request and was granted by LPSK was Susno Duadji a whistleblower who was physically protected and had his legal rights fulfilled. According to article 10 paragraphs (1) and (2) the LPSK Law can be applied to Susno, to be given protection. In the Gaius Halomoan case, Susno was considered worthy of protection because he was considered a whistleblower. After his request was granted, the PT Salwa Arowana bribery case emerged, and then LPSK held a meeting with the National Police Headquarters to conduct an in-depth investigation into the case. After various considerations and plenary meetings were completed. There was a decision that Susno's request was granted and protected under the auspices of the LPSK until now (Suwandewi & Adiyaryani, 2020).

Apart from that, there is the former Manager of Persibara Banjarnegara, Lasmi Indaryani for Witness and Victim Protection (LPSK) who made a request to LPSK and it was granted. The terror that threatened him made Lasmi submit a request to the LPSK to obtain appropriate protection to avoid all the intimidation and terror that he had experienced.

### **Examples of LPSK cases in America:**

Case 1: Researcher from the University of Nebraska – Lincoln, Tarik Abdel-Monem, tells the story of the tragic fate that befell John Harold Mena, a Colombian national who supplied drugs to the US. Mena was arrested by US federal authorities in 1992. He did not want a life sentence and later applied for cooperation to testify against his mafia bosses in Colombia. The US Drug Enforcement Administration (DEA) also promised to protect all his family members in Colombia. Mena said that his boss knew that he was testifying against him and he vowed to fight back for his family. Her boss threatened to kill every member of Mena's family he could find. Mena asked the DEA to protect her family. That was the agreement he made with a US federal judge.

However, 5 members of Mena's family were killed, and the DEA denied responsibility and stated that the deaths of Mena's family members were not related to Mena's testimony in the US. Previously, the DEA promised to move 18 members of the Mena family from Colombia to the US for protection.

Case 2: e-KTP witness Johannes Marliem died before he could submit a letter requesting witness protection to the LPSK. e-KTP witness Johannes Marliem died before he could submit

a letter requesting witness protection to the LPSK. Previously, Johannes and LPSK had communicated at the end of July 2017 for witness protection. Johannes has been asked by LPSK to look at the LPSK website and fill out the witness protection application list. However, until the day he died, LPSK had not received a letter from Johannes. Article 29 of Law Number 13 of 2006 states that applications should be submitted by legal representatives or law enforcers other than Johannes himself. LPSK has also approached Johannes first to enter witness protection. Johannes did not reject the offer from LPSK. When asked to visit the LPSK website, Johannes responded well.

However, because protection is voluntary, LPSK will not force it. LPSK itself is looking into the urgency of protecting Johannes independently. Before being asked by the KPK, LPSK had already started bidding with Johannes. LPSK itself has been following the e-KTP case since 2012. Witness protection in America has never been carried out by LPSK. However, it is not difficult to cooperate with America in terms of witness protection. All that is needed is to establish communication with the Indonesian embassy in America. Apart from Johannes, LPSK has also tried to offer protection to Miryam S Haryani who is also an important witness in the e-KTP case. However, Miryam did not respond to telephone calls and short messages from LPSK.

#### **4. CONCLUSION**

Based on the analysis and discussion above, it can be concluded that: First, the Witness and Victim Protection Agency (LPSK) was established because of the implementation of the policies of Law No. 13 of 2006 concerning the protection of witnesses and victims. From a political perspective, the law on institutional witness and victim protection is an issue in a different operational context. In other countries, witness and victim protection differ and are operationalized by various institutions. For example, in America, protection for crimes at the federal or state level is carried out by the US Marshal Agency.

The central government only provides accommodation to protect witnesses and victims for a few days until the case is tried. Second, a more detailed witness and victim protection mechanism is regulated in the Regulation of the Chair of the Witness and Victim Protection Agency Number 6 of 2010 concerning Procedures for Providing Witness and Victim Protection.

Chapter 2 addresses the requirements and procedures for applying for protection, with the first part focusing on the application. Third, the obstacles that LPSK still faces in implementing witness and victim protection include the agency's incomplete strength (Capacity Building), suboptimal collaboration between LPSK and other agencies, and the paradigm or perspective of law enforcers concerning the presence of the law regarding witness and victim protection. Law enforcers still consider that the Criminal Procedure Code is everything.

## References

- 1) Dinningrat, D. (2017). Analisis Perrindungan Hukum Terhadap Penahanan Tersangka Pada Tingkat Penyidikan Berdasarkan Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 4 Tahun 2015 (Studi Kepolisian Resor Lampung Barat). *JURNAL POENALE*, 5(3).
- 2) Evand Hadi, E., & Chepi Ali Firman Z. (2022). Hak terhadap Korban Perdagangan Orang Dihubungkan dengan Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi Dan Korban. *Bandung Conference Series: Law Studies*, 2(2). <https://doi.org/10.29313/bcsls.v2i2.2566>
- 3) Julianto, B. (2020). Perlindungan Hukum Terhadap Saksi Dan Korban Dalam Sistem Peradilan Pidana Di Indonesia. *Jurnal Lex Renaissance*, 5(1). <https://doi.org/10.20885/jlr.vol5.iss1.art2>
- 4) Marzuki, P. M., & Sh, M. S. (2021). *Pengantar ilmu hukum*. Prenada Media.
- 5) Mohd. Yusuf DM, Amirson, Itoni, Erja Napogos, & Geofani Milthree Saragih. (2023). Kedudukan Justice Collabolator (JC) Dalam Sistem Peradilan Pidana Di Indonesia. *Jurnal Pendidikan Dan Konseling*, 5(2).
- 6) Nasty, F. T., & Lesmana, C. T. (2023). Perlindungan Hukum Terhadap Korban Perdagangan Orang Dihubungkan Dengan Undang-Undang Nomor 31 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban (Studi Kasus Putusan Nomor 536/Pid.B/2019/Pn.Bdg.). *Jurnal Hukum Dan HAM Wara Sains*, 2(01). <https://doi.org/10.58812/jhhws.v2i01.185>
- 7) Nugraha, A. B., & Zakaria, C. A. F. (2022). Perlindungan Hukum terhadap Korban Tindak Pidana Pelecehan Seksual Ditinjau dari Undang-Undang No. 31 Tahun 2014 Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban. *Bandung Conference Series: Law Studies*, 2(2). <https://doi.org/10.29313/bcsls.v2i2.2529>
- 8) Panjaitan, C. mutiara juwita, & Putri, A. (2017). Peran Dari Lembaga Perlindungan Saksi Dan Korban (Lpsk) Dalam Pemeriksaan. *Jurnal Hukum Pidana Dan Penanggulangan Kejahatan*, 2(1).
- 9) Pribadi, D. (2018). Perlindungan Terhadap Anak Berhadapan Dengan Hukum. *Jurnal Hukum Volkgeist*, 3(1). <https://doi.org/10.35326/volkgeist.v3i1.110>
- 10) Rauf, S., Hasjad, H., & Guntur, S. (2022). Efektifitas Peran Lembaga Perlindungan Saksi Dan Korban (Lpsk) Dalam Melindungi Saksi Tindak Pidana Gratifikasi. *Sibatik Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, 1(3). <https://doi.org/10.54443/sibatik.v1i3.26>
- 11) Republik Indonesia. (2009). Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman. *Tambahan Lembaran Negara Republik Indonesia Nomor 5076*.
- 12) Sujarwo, H. (2020). Pembaharuan Restitusi Kepada Korban Tindak Pidana Dalam Undang-Undang Perlindungan Saksi Dan Korban Berdasarkan Nilai-Nilai Hukum Islam. *Manarul Qur'an: Jurnal Ilmiah Studi Islam*, 20(1). <https://doi.org/10.32699/mq.v20i1.1614>
- 13) Suleman, N. H. (2016). Perlindungan Saksi Dan Korban. *Jurnal Ilmiah Al-Syir'ah*, 7(1). <https://doi.org/10.30984/as.v7i1.64>
- 14) Sumadikara, T. S. (2016). Eksistensi Perlindungan Saksi Dan Korban Dalam Perspektif Sistem Peradilan Pidana Di Indonesia. *LITIGASI*, 17(2). <https://doi.org/10.23969/litigasi.v17i2.156>
- 15) Suwandewi, N. K. A., & Adiyaryani, N. N. (2020). Diversi sebagai Bentuk Perlindungan Anak dalam Sistem Peradilan di Indonesia. *Kertha Patrika*, 42(3). <https://doi.org/10.24843/kp.2020.v42.i03.p04>
- 16) Tuage, S. N. (2013). Perlindungan Hukum Terhadap Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban (LPSK). *Lex Crimen*, 2(2).