

**Review Article****JURIDICAL ANALYSIS OF LEGAL PROTECTION OF REPORTING WITNESSES IN CORRUPTION CRIMES IN INDONESIA**¹Mario Franky Sitorus, ²Muhammad Yusuf Siregar, ³Wahyu Simon TampubolonEmail : [1mariofranky99@gmail.com](mailto:mariofranky99@gmail.com), [2siregaryusuf90@yahoo.co.id](mailto:siregaryusuf90@yahoo.co.id), [3tampubolon.fhulb@gmail.com](mailto:tampubolon.fhulb@gmail.com)**Article History**

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Journal homepage:<https://jurnal.arjunajusticia.com/index.php/ijeck>**Abstract:**

The aim of this research is to solve the problem to be researched, so the aims and objectives of this research are to determine the juridical analysis of legal protection for reporting witnesses in criminal acts of corruption in Indonesia. This type of legal research is a type of empirical legal research, namely legal research which functions to look at the law in real terms and examine how the law works in providing legal protection to reporting witnesses in criminal acts of corruption. Based on the results of the research and discussion that the author describes, it can be concluded from the research results that currently there are no clear regulations that state the extent of LPSK's responsibility in providing protection to witnesses, because as long as witnesses are under their protection, witnesses still receive pressure in the form of intimidation and abuse as well as all other forms of crime.

Keywords: *Legal Protection, reporting witnesses, Corruption Crimes;*

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INTRODUCTION

Development in Indonesia must look at several aspects, one of the most important aspects in development is the aspect of environmental maintenance. Development can actually advance the welfare of society, but sometimes with development in an area we forget that security, order and human safety are important factors in that development.

A social phenomenon that currently occurs among officials is corruption. Corrupt behavior is deviant behavior that violates statutory regulations. Corrupt behavior carried out by

corruptors brings material losses to the state, and can even endanger the life of the nation and state, due to the significant losses that will be borne by the state from the results of corrupt activities by these corruptors. Corruption behavior which is classified as a criminal act is of great concern to the public for certain institutions in preventing and eradicating criminal acts of corruption. The Corruption Eradication Committee (KPK) is a special institution formed to carry out efforts to overcome and eradicate criminal acts of corruption that occur in Indonesia. The existence of the Corruption Eradication Commission (KPK) is of course expected to be in accordance with applicable laws and regulations, as well as guaranteeing the handling and determination of legal decisions that are truly in accordance with legal provisions. Therefore, without such regulation, institutions that have this power will produce unfair legal decisions, which can lead to worse consequences.

The formation of the KPK was in order to increase the efficiency and effectiveness of efforts to eradicate corruption. As an agency that is expected to act extraordinarily in eradicating corruption, the Corruption Eradication Commission (KPK) is entrusted with 5 (five) tasks as regulated in Article 6 of Law Number 30 of 2002 (UU KPK), namely:

- a) Coordination with agencies authorized to eradicate criminal acts of corruption;
- b) Supervision of agencies authorized to eradicate criminal acts of corruption;
- c) Carrying out inquiries, investigations and prosecutions of criminal acts of corruption;
- d) Carry out measures to prevent criminal acts of corruption; And
- e) Monitoring the administration of state government.

In law enforcement efforts, there needs to be legal certainty to guarantee the rights of every citizen in Indonesia. This also includes enforcing the law in eradicating criminal acts of corruption, as stated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999.¹

Various cases of corruption that have occurred in Indonesia, reported by reporting witnesses, sometimes give rise to polemics regarding the disclosure of these criminal acts of corruption. The existence of reporting witnesses increasingly experiences intimidation and even threats that endanger their lives from other parties. In fact, there were also those who were drawn in. At first they became witnesses and then turned into suspects. This is the background for the author's title: Juridical Analysis of Legal Protection for Reporting Witnesses in Corruption Crimes in Indonesia. It is hoped that by writing this we can understand that legal protection for reporting witnesses in criminal acts of corruption in Indonesia is very important and necessary. Because being a witness in the disclosure of a criminal case will pose a threat to the safety of someone called a witness.

¹Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, atas perubahan Undang-Undang Nomor 20 Tahun 2001.

RESEARCH METHODS

The research method used in this research is normative legal research method,² namely by analyzing the problems based on the analysis of legal principles and norms, as well as laws and regulations. This research is focused on library research. Literature research is carried out by examining those related to the Position of the Deed in Providing Legal Protection and Legalizing the Registration of Transfer of Land Rights, laws and regulations, literature books, references, documents and results of research reports related to the subject matter studied.

RESULTS AND DISCUSSION

1. Forms of Legal Protection for Witnesses Reporting Corruption Crimes in Indonesia;

Menurut Setiono, Perlindungan Hukum adalah tindakan atau upaya untuk melindungi masyarakat dari perbuatan sewenang-wenang oleh penguasa yang tidak sesuai dengan aturan hukum, untuk mewujudkan ketertiban dan ketentraman sehingga memungkinkan manusia untuk menikmati martabatnya sebagai manusia.³

According to the Big Indonesian Dictionary (KBBI), legal protection means a place of refuge, actions (things and so on) to protect. The linguistic meaning of the word protection has similar elements, namely elements of protective actions, elements of ways of protecting. Thus, the word protects against certain parties by using certain methods.⁴ Legal Protection is all efforts to provide protection for human rights that have been harmed by others, so that this protection is given to the community so that they can enjoy all the rights granted by law.

In Law Number 31 of 2014 concerning Protection of Witnesses and Victims, in article 1 it is stated that a witness is a person who can provide information for the purposes of investigation, inquiry, prosecution and examination at a court hearing regarding a criminal act that he himself has heard of, he see for yourself, and/or experience it for yourself. Furthermore, Article 1 number 4 states that a reporter is a person who provides a report, information or statement to law enforcement regarding a criminal act that will, is being, or has occurred. So, the reporting witness namely a person who provides reports, information or statements to law enforcement regarding criminal acts that will, are currently or have occurred.

The term criminal act is basically a translation from the Dutch *Strafbaar feit* which has many other terms, namely offense, criminal incident, criminal act, acts that can be punished, things that are threatened with law, acts that are threatened with law. *Strafbaar feit* consists of three words, namely *straf.baar danfeit*. *Straf* is translated as criminal and legal. *Baar* is translated as can or may. *Feit* is translated as action, event, violation and deed.⁵ Criminal acts are a basic definition in criminal law (disnormative jurisprudence). Crimes or evil acts can be interpreted

²Penelitian hukum normatif dapat juga disebut dengan penelitian hukum kepustakaan, yang mencakup: (1) penelitian terhadap asas-asas hukum, (2) penelitian terhadap sistematik hukum, (3) penelitian terhadap taraf sinkronisasi vertikal dan horizontal, (4) perbandingan hukum, (5) sejarah hukum. Soejono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: Raja Grafindo Perkasa, 2010), hal. 13-14. Penelitian hukum normatif, adalah penelitian hukum yang meletakkan hukum sebagai sebuah bangunan sistem norma. Sistem norma yang dimaksud adalah mengenai asas-asas, norma-norma, dan kaidah dari peraturan perundangan, putusan pengadilan, perjanjian, serta doktrin (ajaran). Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum; Normatif dan Empiris*, (Yogyakarta: Pustaka Pelajar, 2010), hal. 34

³ Setiono, *Supremasi Hukum*, (Surakarta: UNS, 2004), hlm. 3.

⁴ Kamus Besar Bahasa Indonesia (KBBI), Edisi Kedua, Cet. 1, (Jakarta: Balai Pustaka), hlm. 595.

⁵Adami Chazawi, *Pelajaran Hukum Pidana 1*, PT. Raja Grafindo, Jakarta, 2007, Hlm 69

juridically or criminologically. Crimes or evil acts in the normative juridical sense are acts as manifested in abstracto in criminal regulations.⁶

According to Moeljatno, a criminal act is an act that is prohibited by a rule of law, this prohibition is accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition.⁷

Meanwhile, corruption comes from Latin, namely *Corruptus* and *Corruption*, meaning bad, depraved, deviating from purity, insulting words, or slanderous. In the Black Law Dictionary in the KPK Corruption Crime module, Corruption is an act carried out with the intention of obtaining some benefit which is contrary to official duties and other truths "an act of an official or someone's trust which violates the law and is full of mistakes using a number of advantages for oneself or others that are contrary to duties and other truths.

The elements of criminal acts of corruption as referred to in Law Number 31 of 1999 are:

- 1) Actor (subject), in accordance with Article 2 paragraph (1). This element can be linked to Article 20 paragraphs (1) to (7), namely:
- 2) In the event of a criminal act of corruption by or against a corporation, criminal charges and impositions can be made against the corporation and/or its management.
- 3) A criminal act of corruption is committed by a corporation if the criminal act is committed by people either based on an employment relationship or based on another relationship, acting within the corporate environment either individually or together.
- 4) In the event that criminal charges are brought against a corporation, the corporation is represented by the management.
- 5) The management representing the corporation as intended in paragraph (3) may be represented by another person.
- 6) The judge can order that the corporation's management appear in court in person and can also order that the management be brought to court.
- 7) In the event that criminal charges are brought against the corporation, the summons to appear and the submission of the summons are delivered to the management at the management's place of residence or at the management's office.
- 8) The main penalty that can be imposed on a corporation is only a fine with the maximum penalty being increased by 1/3 (one third).
- 9) Against the law, both formal and material.
- 10) Enrich yourself, other people or the corporation.
- 11) Can be detrimental to the country's finances or economy.
- 12) If the criminal act of corruption as intended in paragraph (2) is committed under certain circumstances, the death penalty can be imposed.
- 13) Causes of Corruption

The success of a criminal justice process is very dependent on the evidence that is successfully uncovered or discovered during the trial process. Witnesses are a very determining

⁶Sudikno Mertokusumo, *Mengenal Hukum, Liberty*, Yogyakarta, 1999, Hlm 10

⁷Ismu Gunadi dan Jonacdi Efendi, *Hukum Pidana, Kencana*, Jakarta, 2014, Hlm 35

element in the criminal justice process. The law provides certainty in providing guarantees of protection for witnesses and victims. This has an important role in the criminal justice process so that witness and victim statements given freely from fear and threats can reveal a criminal act. The existence of witnesses in the criminal justice process has so far received little attention from the public and law enforcement. Many cases that are not revealed and resolved are caused by witnesses being afraid to give testimony to law enforcement because they often receive threats from other parties.

Related to the above, in order to foster participation from the public in helping to reveal cases of criminal acts of corruption in Indonesia, it is necessary to create legal certainty regarding legal protection for every person who is a witness in a criminal case of corruption. With this guarantee of legal protection, it is hoped that a situation that allows the public to no longer be afraid to report a criminal act that they know about to law enforcement..

In order to provide protection for witnesses, especially in cases of criminal acts of corruption, legal protection is provided through the mandate of Law Number 13 of 2006 which has been amended by Law Number 31 of 2014 concerning Protection of witnesses and victims or often abbreviated as LPSK. Reporting witnesses in criminal acts of corruption always place the witness in an uncomfortable position and even endanger the safety of his life. So it is felt necessary for witnesses to be able to submit a request for protection to the Witness and Victim Protection Agency (LPSK) in order to receive protection from threats and intimidation from related parties. The Witness and Victim Protection Agency (LPSK) is an independent institution, and is domiciled in the Capital City of the Republic of Indonesia and has representatives in the regions according to their needs. Responding to the problem of the concept of protection for witnesses as contained in Law Number 13 of 2006 as amended by Law Number 31 of 2014 concerning Protection of witnesses and victims, if analyzed, it is necessary to have an institution that manages and handles the issue of protection for witnesses and victims. The promulgation of the Witness and Victim Protection Law greatly supports the process of handling various criminal acts, one of which is corruption. Reporting witnesses in criminal acts of corruption should be given a sense of trust that the law enforcement process must be truly fair and trustworthy, able to protect witnesses both before, during the process and after. The role of reporting witnesses is very important in uncovering criminal cases of corruption in order to obtain evidence that is considered sufficient to bring the perpetrators to justice.

Article 12 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims states that: LPSK is responsible for handling the provision of protection and assistance to Witnesses and Victims based on the duties and authorities as regulated in this Law. Furthermore, Article 14 states that LPSK members consist of 7 (seven) people who come from professional elements who have experience in the fields of promotion, fulfillment, protection, law enforcement and human rights, police, prosecutors, the Department of Law and Human Rights, academics. , advocates, or non-governmental organizations.

The conditions for providing protection and assistance for reporting witnesses in cases of criminal acts of corruption in Indonesia refer to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, where Article 28 states that: LPSK protection agreement for

Witnesses and/or Victims of criminal acts as intended in Article 5 paragraph (2) is given by considering the following conditions:

- a) the importance of the testimony of witnesses and/or victims;
- b) the level of threat that endangers Witnesses and/or Victims;
- c) results of the medical or psychologist team's analysis of Witnesses and/or Victims;
- d) track record of crimes committed by the Witness and/or Victim.

Furthermore, the procedures for providing protection are regulated in Article 29 which regulates the procedures for obtaining protection as intended in Article 5 as follows:

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

Meanwhile in Article 30 (1) In the event that the LPSK accepts the request of a Witness and/or Victim as intended in Article 29, the Witness and/or Victim signs a statement of willingness to comply with the terms and conditions for the protection of Witnesses and Victims. (2) A statement of willingness to comply with the terms and conditions for the protection of Witnesses and Victims as intended in paragraph (1) contains:

- a) Willingness of Witnesses and/or Victims to provide testimony in the judicial process;
- b) Willingness of Witnesses and/or Victims to obey rules relating to their safety;
- c) Willingness of the Witness and/or Victim not to have any contact with other people other than with the approval of the LPSK, as long as he or she is under the protection of the LPSK;
- d) The obligation of Witnesses and/or Victims not to inform anyone about their whereabouts under LPSK protection; And
- e) Other matters deemed necessary by LPSK.

Article 31 LPSK is obliged to provide full protection to Witnesses and/or Victims, including their families, from the moment the statement of willingness is signed as intended in Article 30. The form of legal protection for witnesses reporting criminal acts of corruption in Indonesia is actually not specifically regulated in Law Number 31 of 1999 concerning Eradicating criminal acts of corruption, however, refers to Law 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. that legal protection for witnesses is in the form of:

- a) Protection of personal security, family and property, and freedom from threats related to testimony that will be, is being, or has been given;
- b) Article 10 (1) Witnesses, Victims, Perpetrator Witnesses, and/or Reporters cannot be prosecuted legally, either criminally or civilly for testimony and/or reports that they will, are currently giving, or have given, unless the testimony or report given is not in good faith;
- c) Article 10 (2) In the event that there is a legal claim against a Witness, Victim, Perpetrator Witness, and/or Reporter for testimony and/or reports that will be, is being, or has been given, the legal claim must be postponed until the case he reports or he provided testimony that had been decided by the court and had permanent legal force

2. Obstacles in Providing Legal Protection to Reporting Witnesses in Corruption Crimes in Indonesia

The provision of legal protection for reporting witnesses in cases of criminal corruption in Indonesia is hampered by several obstacles. Obstacles are defined as obstacles to the provision of legal protection for reporting witnesses to assist in uncovering cases related to criminal acts of corruption in Indonesia. Legal protection for witness rights is provided starting at the investigation stage. Basically, there is almost no difference between the examination of witnesses and suspects, both regarding the summons procedure and the examination method, both are based on the same rules and principles. LPSK is obliged to provide protection for witnesses in giving testimony at the police, prosecutor's office and even court level. However, in general, LPSK's accountability is not fully carried out properly, because LPSK, which should be obliged to provide protection to witnesses in a criminal act, in fact still receives terror and threats from other parties to thwart reporting witnesses from giving their testimony in a criminal corruption case.

We can see several obstacles in providing legal protection to reporting witnesses in criminal acts of corruption in Indonesia as follows:

- a) The reporting witness or his or her representative does not submit a written application to the LPSK to obtain protection;
- b) Reporting witnesses are not willing to provide testimony in the process of disclosing criminal acts of corruption. Traumatic feelings and reluctance to become witnesses as well as mental instability of a witness, especially when facing investigators are obstacles in providing legal protection to reporting witnesses in criminal acts of corruption in Indonesia.
- c) The reporting witness did not comply with the rules relating to his safety;
- d) The reporting witness has contact with other people without the approval of the LPSK, because the witness is expected not to have contact in any way with other people other than with the approval of the LPSK, as long as he is under the protection of the LPSK;
- e) The reporting witness informs the general public about his whereabouts without the LPSK knowing, because the reporting witness is under the protection of the LPSK, the reporting witness is obliged not to tell anyone about his whereabouts because it could threaten his safety.
- f) There are no clear regulations that state the extent of LPSK's responsibility in providing protection to witnesses, because as long as witnesses are under their protection, witnesses still receive pressure in the form of intimidation and abuse as well as all other forms of crime..

CONCLUSION

Forms of legal protection for reporting witnesses in criminal acts of corruption in the form of protection for the security of their person, family and property, as well as freedom from threats relating to the testimony they will, are giving or have given. Article 10 (1) Witnesses, Victims, Perpetrator Witnesses, and/or Reporters cannot be prosecuted legally, either criminally or civilly for testimony and/or reports that they will, are giving, or have given, unless the

testimony or report was given not in good faith. Good. Article 10 (2) In the event that there is a legal claim against a Witness, Victim, Perpetrator Witness, and/or Reporter for testimony and/or a report that will be, is being, or has been given, the legal claim must be postponed until the case he reports or provides the testimony has been decided by the court and has permanent legal force. Furthermore, there are obstacles in providing legal protection to reporting witnesses in criminal acts of corruption in Indonesia. The reporting witnesses or their representatives do not submit a written application addressed to the LPSK as a witness and victim protection agency to obtain protection. The reporting witnesses are not willing to provide testimony in the process of disclosing the crime. Corruption crimes, traumatic feelings and reluctance to become witnesses as well as mental instability of a witness, especially when dealing with investigators are obstacles in providing legal protection to reporting witnesses in corruption crimes in Indonesia. The reporting witness did not comply with the rules relating to his safety, the reporting witness had contact with other people without the approval of the LPSK, because the witness was expected not to have contact in any way with other people other than with the approval of the LPSK, as long as he was under the protection of the LPSK, the reporting witness informed him of his whereabouts to the general public without LPSK knowing, because the reporting witness is under the protection of the LPSK, the reporting witness is obliged not to tell anyone about his whereabouts because it could threaten his safety. There is no clarity regarding the fulfillment of the financial rights of the witness given to the reporting witness and No there are clear regulations that state the extent of LPSK's responsibility in providing protection to witnesses, because as long as witnesses are under their protection they will still be under pressure in the form of intimidation and abuse as well as all other forms of crime..

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