



Existence of Witness and Victim Protection Agencies in the Perspective of Justice for Victims Domestic Violence

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ABSTRACT

The objective of this research is to examine the functioning of institutions responsible for safeguarding witnesses and victims in ensuring justice, advantages, and legal assurance for individuals affected by domestic violence. The chosen research method is Normative Juridical, also known as Normative research. Despite the Witness and Victim Protection Agency fulfilling its responsibilities to protect victims of domestic violence, it is not the primary choice for those seeking protection. To address this, there is a need to extend the reach of the Witness and Victim Protection Agency beyond the National Capital to include representatives in all Provincial Capitals across Indonesia. Additionally, empowering these representatives to make decisions on protection requests from domestic violence victims is crucial. Furthermore, there is a necessity to formalize the institutional relationships between the Witness and Victim Protection Agency and other relevant organizations. This would enhance protection services tailored to the specific requirements of domestic violence victims. This could involve establishing institutional connections to improve the overall effectiveness of victim protection efforts

INTRODUCTION

The revolutionary shift from criminal law in the 18th century which was oriented only to acts (*Daad-strafrecht*) on the basis of the Classical School to criminal law that adhered to the Modern School or the Positive School in the 19th century which was oriented towards humans as evildoers (*Dader-strafrecht*) has not stopped. After the development of the human-oriented school (*Dader-strafrecht*), its continuation narrowed to a combination of the two in the form of "*Daad-Daderstrafrecht*" within the framework of the Neo-Classical School in the 19th century that occurred since the French Revolution (Muladi, 2014).

Awareness to provide support and protection to victims of crime has more or less been possessed by various countries in Europe. Various efforts to handle crime cases carried out by the local criminal justice system have led to a process that puts crime victims as the main concern. This is further evidenced by the existence of official agents who are specifically tasked with providing support and assistance to victims of crime, such as *Victim Support* (Meliala, 2014a).

In some countries, *victim support* is common in positive law. Hong Kong has sensitized the interests of its victims by adopting the *Statement of Prosecution Policy and Practice (2002)*, the *Victims of Crime Charter (1996) (revised 2003)* and the *Statement on the Treatment of Victims and Witnesses (2004)*. Hong Kong issued a policy of asking the court to provide compensation or restitution, collecting information on losses received by victims of crime (Chan & Wing-Cheong, 2008) in (Meliala, 2014b).

However, in actuality, the most disadvantaged party is always the victim. The victim not only experiences losses from the committed crime, encompassing material, physical, and psychological aspects, but also endures additional hardships as they are often treated merely as a means to achieve legal certainty. Throughout the examination process, both during the investigation phase and court proceedings, victims are compelled to repeatedly recount, recollect, and even reconstruct the crimes they have endured.

The author asserts that the perpetrator, or convict, should bear direct responsibility for the well-being of the victim by providing both material and formal compensation. This perspective aligns with the regulations outlined in Law Number 23 of 2004, specifically addressing criminal fines for those convicted of domestic violence. Furthermore, the author emphasizes the necessity of the state implementing the "security protection" principle to ensure the safety of crime victims. Additionally, there is a call for the "principle of rehabilitation" to address the physical and psychological health of crime victims in general, with a particular focus on victims of domestic violence. The absence of security protection and rehabilitation support implies that victims do not fully benefit from law enforcement against perpetrators of crimes.

The temporary protection offered by the police and court, as outlined in several articles of protection for victims of domestic violence in Law Number 23 of 2004, is crucial at the preventive stage. This involves both temporary protection and court-sanctioned protection, alongside advocacy efforts for victims of domestic violence.

Legal protection for wives who are victims of Domestic Violence under this Law is (1) temporary protection; (2) the establishment of a protection order by

the court; (3) provision of a Special Service Room (SSR) at the police station; (4) provision of safe houses or alternative residences; (5) the provision of legal consultation by advocates to victims at the level of investigation, prosecution, and examination at court hearings.

In essence, the Witness and Victim Protection Agency is tasked with providing protection and safeguarding the rights of witnesses and/or victims as stipulated in the Law on Witness and Victim Protection Institutions. However, the legislation lacks explicit clarification regarding the agency's responsibilities and authorities. Unlike other statutes, the tasks and powers of the Witness and Victim Protection Agency are scattered throughout the law, rather than being consolidated in a distinct section or chapter.

The current organizational structure of the Witness and Victim Protection Agency is considered suboptimal. Upon closer scrutiny, it becomes evident that the specific responsibilities and authorities of the agency are not clearly defined in the Witness and Victim Protection Law. This law primarily focuses on aspects such as responsibilities, membership and selection procedures, decision-making, and funding of the Witness and Victim Protection Agencies, omitting specific regulations for elements like organizational structure, institutional support, administration, human resources, supervision, transparency, and accountability.

Contrastingly, in the Law on the Elimination of Domestic Violence, individuals facing violence or threats of violence within the household are guaranteed protection. (Prayudi, 2012).

Based on this description, the purpose to be achieved in this research, preparation and writing is "Analyzing the arrangements of witness and victim protection agencies in providing justice for the protection of victims of domestic violence".

LITERATURE REVIEW

According to Barda Nawawi Arief explained that the meaning of "victim protection" can be seen from two sides, namely:

- (a) is akin to 'legal safeguard against falling prey to a criminal deed' (indicating the preservation of an individual's human rights or legal interests)
- (b) can be construed as the safeguarding of entitlements for legal assurances or reparation for the anguish/loss experienced by individuals who have fallen victim to criminal acts (essentially mirroring victim support). The compensation may manifest in various ways such as the reinstatement of reputation (rehabilitation), reestablishment of emotional equilibrium (including forgiveness), provision of reparation (restitution, compensation, social welfare assurances/benefits), and so forth. (Arief, 2008).

With reference to the application of the protection of the rights of crime victims, according to Arif Gosita, the basic principles of protecting crime victims can be seen from three theories, namely: Initially, let's consider utility theory, which emphasizes maximizing benefits for the majority. The application of safeguarding crime victims should be pursued only if it yields greater

advantages compared to not implementing the concept. This pertains not only to the well-being of victims but also benefits the overall criminal law enforcement system. Moving on to the theory of responsibility, it posits that individuals or groups are accountable for all legal actions they undertake. Consequently, if someone engages in criminal activities resulting in harm to others, they must bear responsibility for the inflicted harm, unless there exists a valid justification for exoneration. Lastly, the theory of indemnity underscores that, as an acknowledgment of their culpability, perpetrators are obligated to compensate the victim or their heirs for the harm caused. (Gosita, 1993).

Presently, there is a noticeable disparity in the emphasis on legal safeguards for individuals who have fallen victim to criminal acts within the legal framework. Both the substantive aspects of criminal law and the procedural dimensions (formal criminal law) seem to allocate less attention to providing protection for victims when juxtaposed with the focus on safeguarding the rights of suspects and defendants. Several factors contribute to this discrepancy, encompassing legal considerations, the awareness of victims about their legal rights, the availability of supportive infrastructure, and the adequacy of human resources.

The effectiveness of a legal system in maintaining order is significantly influenced by the presence and implementation of laws, as they serve as the primary foundation of the legal structure. (Mansur & Gultom, 2007). Despite the existence of Law Number 23 of 2004, which addresses criminal fines for individuals convicted of Domestic Violence, a considerable number of victims refrain from reporting their cases to the authorities. This reluctance can be attributed to various factors, such as feelings of shame and hesitation within the extended family, as well as the fear of public disgrace if the incident becomes known. These emotions are rooted in societal beliefs that some members hold, blaming the victims for the violence they endure. Additionally, economic dependence on the perpetrator, often the husband, serves as a significant deterrent for reporting. Furthermore, women may be discouraged from reporting violence due to concerns about the effectiveness of law enforcement in handling such cases. (Irianto & Nurtjahyo, 2006).

In general, the primary purpose of the Witness and Victim Protection Agency involves engaging in activities, programs, and initiatives aimed at fulfilling its responsibilities across various domains. The agency is deemed crucial as it addresses the widespread belief within the community that safeguarding witnesses and victims is imperative within the judicial system. The significance of witnesses and victims in criminal trials cannot be overstated, as their statements often exert influence and play a pivotal role in shaping the judge's ultimate decision. Established with the core mandate of providing protection to witnesses and victims, the agency has demonstrated a commendable track record, albeit in a relatively limited capacity, earning recognition from diverse quarters. The agency's protective measures extend to individuals involved in serious cases, and the resultant safeguarding contributes to the enforcement of the law, ultimately fostering the pursuit of justice. (Rahmat, 2012).

METHODOLOGY

This research is a normative juridical research. Bahder Johan Nasution said that "Normative legal research examines legal principles, legal systematics, levels of legal synchronization, comparative law and legal history" (Nasution, 2008). Meanwhile, according to Peter Mahmud Marzuki "Normative juridical research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced" (Marzuki, 2010).

RESULTS

In general, it has been understood that justice is a fundamental principle in law and ethics that refers to fair, equal and appropriate treatment of correct values towards individuals and groups in various situations. The characteristics of justice involve elements that create an environment in which the rights, obligations, and dignity of all people are respected and treated appropriately. Protection that meets the form of justice involves a number of indicators that show that individuals or groups get fair and equal treatment in various situations.

In a legal perspective, expediency characteristics refer to the extent to which an action, policy, or rule provides positive and sustainable benefits to individuals, communities, and entities involved. This concept refers to the purpose of law to create a positive impact in various aspects of life and maintain a balance between various interests. Expediency in a legal perspective is an important foundation in formulating, implementing, and evaluating existing policies and regulations. It aims to create a legal system that has a positive and sustainable impact on individuals, society, and the environment as a whole. Expediency indicators in protection refer to signs or measures used to assess the extent to which a protection program, policy, or effort provides positive and effective benefits to the protected individual or group. These indicators help measure the positive impact of protection efforts and identify whether protection objectives have been achieved.

Legal certainty is an important principle in law that refers to situations where the rule of law is clear, understandable, and reliable to individuals and parties involved. This principle creates stability and trust in the legal system and ensures that people can understand the consequences of their actions. Legal certainty is an important foundation in creating a fair and reliable legal system. This principle ensures that individuals and communities have confidence that laws will be applied consistently and that their rights will be respected.

The implementation of legal certainty in the context of protection encompasses various elements that ensure the fair, consistent, and reliable application of the law to safeguard the rights of individuals or groups. In this context, the pursuit of legal certainty in protection seeks to guarantee equitable and uniform treatment for all involved parties, ensuring that the rights of everyone are consistently respected and protected.

Moreover, considering the characteristics of justice, expediency, and legal certainty, it becomes evident that witness and victim protection, embodying

principles of justice, expediency, and legal certainty, is crucial to ensuring comprehensive and balanced protection for individuals involved in legal processes.

Gustav Radbruch posited that a good law incorporates the values of justice, legal certainty, and usefulness. Regarding the principle of justice, it aligns with Aristotle's concept, stating that justice involves providing each individual with what is rightfully theirs. A scrutiny of the laws and regulations governing the Witness and Victim Protection Institution reveals a failure to fulfill the principle of justice for victims of Domestic Violence. This is apparent in the legal framework, including Law Number 13 of 2006 on the Protection of Witnesses and Victims, Law Number 31 of 2014 amending Law Number 13 of 2006, and Chairman Regulation Number 6 of 2010 on Procedures for Providing Protection of Witnesses and Victims. These regulations predominantly focus on the criminal law enforcement process and do not sufficiently ensure the overall protection rights of victims of Domestic Violence.

DISCUSSION

1. Protection of Witnesses and Victims in the Perspective of Justice, Expediency and Legal Certainty

Protection of witnesses and victims is an effort that must be made in order to realize and respect human rights, encourage justice, and ensure that the ongoing legal process will be carried out properly as part of realizing material truth in a criminal process.

However, the framework for achieving witness and victim protection efforts above is not only implemented in order to achieve the truth of material in a criminal process, but more than that is the framework of realizing the state's responsibility to protect everyone from every criminal act and violation of human rights inherent in everyone.

This is then the framework for the protection of witnesses and victims must also be based on the perspective of justice, expediency, and legal certainty, whose benchmarks are not only based on the interests of law enforcement efforts but more than that must be based on the fulfillment of the rights and protection of witnesses and victims for criminal events they experience.

According to the author, concretely there are several reasons why the principles of justice, expediency, and legal certainty must be reflected in efforts to protect witnesses and victims, namely:

- 1. Justice**, which is based on consideration:
 - a. Protection of witnesses and victims that reflects justice will ensure that the rights and dignity of individuals as witnesses and victims will always be respected. The existence of equal and impartial treatment, which results in discrimination and injustice will clearly be excluded or minimized by the protection of witnesses and victims that can reflect the fulfillment of this principle of justice;
 - b. Justice refers to fair and equal treatment for all parties involved in the legal process, including witnesses and victims. In such a position, it is necessary to ensure that witnesses and victims have the right to be heard, respected, and protected from threats or harassment;

- c. In the protection of witnesses and victims, justice also means ensuring that perpetrators of crimes are confronted with their responsibilities and receive appropriate punishment. Such a responsibility, will be fulfilled if the legal process in order to find the material truth will be fulfilled because of the guarantee of witness and victim protection that fulfills justice for these witnesses and victims.

2. Expediency, which is based on consideration:

- a. Witness and victim protection that focuses on expediency will be able to ensure that witness and victim protection efforts will have a positive and tangible impact on individuals, namely witnesses and victims themselves, and will also provide benefits to society in general;
- b. The benefits that can be fulfilled from the protection of witnesses and victims will include efforts to improve welfare, risk and vulnerability reduction, physical and psychological recovery, and empowerment. All of the above efforts will provide benefits in helping victims recover and return to contribute productively in society;
- c. The benefits will be reflected in the protection of witnesses and victims, which is related to the benefits of the ongoing law enforcement process, namely in this case if witnesses and victims who are given protection will feel safe and protected, then these witnesses and victims will be more likely to provide information that is in accordance with the material truth needed in the criminal law enforcement process and can be relied upon in legal proceedings, which in turn supports justice.

3. Legal Certainty, which is based on considerations:

- a. Witness and victim protection that reflects legal certainty will ensure that witnesses and victims will have access to a structured, reliable, and understandable legal process;
- b. In a protection situation, the existence of legal certainty in the protection carried out against witnesses and victims will open space so that the legal provisions governing the protection of witnesses and victims have clear and easily accessible arrangements for everyone, due to which witnesses and victims in the form of legal certainty will be able to know their rights, procedures to be followed in the law enforcement process, and the types of protective support available to witnesses and victims;
- c. The application of legal certainty in the protection of witnesses and victims also includes consistent and impartial application of perpetrators of criminal acts, so that such treatment will be able to provide confidence to the community that criminal acts will be dealt with fairly and in accordance with applicable laws and regulations.

By integrating justice, expediency, and legal certainty in witness and victim protection, justice systems can better function in achieving human rights goals, reducing the negative impact of crime, and creating a safe and fair environment for all citizens of society.

2. Fulfillment of Justice for Victims of Domestic Violence Based on the Arrangement of Witness and Victim Protection Agencies

In Gustav Radbruch's perspective, an ideal law incorporates the principles of justice, legal certainty, and utility. As articulated by Muhammad Erwin citing Radbruch, the prioritization of these three fundamental values is essential in guiding the purpose of the law. Radbruch emphasizes that conflicts often arise between legal justice and expediency, as well as between justice and legal certainty. When these conflicts occur, sacrifices become inevitable. Radbruch proposes a hierarchical order for these values: first, prioritize legal justice; second, consider the expediency of legal laws; and third, uphold legal certainty. (Erwin, 2012).

The concept of justice encompasses diverse interpretations derived from the examination of perspectives offered by various experts. The application of justice in evaluating the rights of victims of Domestic Violence within the legal framework of the Witness and Victim Protection Agency is rooted in the principles of justice articulated by Aristotle. According to Aristotle, justice involves the fair distribution of entitlements to individuals in alignment with what rightfully belongs to them. (Alperdorn, 2008).

According to the justice principle proposed by Aristotle, the legislation governing the Witness and Victim Protection Agency does not align with the concept of justice for victims of Domestic Violence. This is evident in the legal framework, specifically Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, Law Number 31 of 2014 amending Law Number 13 of 2006, and Chairman Regulation Number 6 of 2010 outlining Procedures for Providing Witness Protection and Victims. These laws primarily address the protection of witnesses and victims in a general context within the criminal law enforcement process, lacking specific provisions that cater to the distinct protection needs of Domestic Violence victims. To adequately fulfill the rights of protection for victims of Domestic Violence, a dedicated form of protection with unique characteristics is essential, distinct from the treatment provided to victims of other crimes.

Similarly, examining Law Number 23 of 2004 concerning the Elimination of Domestic Violence, even though it specifically addresses the protection of Domestic Violence victims, there is no explicit provision assigning responsibility to the Witness and Victim Protection Agency to ensure protection for victims of violence within the household. As a result, the constitutional rights of everyone, particularly the right to protection as a manifestation of human rights, remain unfulfilled.

In conclusion, it can be asserted that the current laws and regulations governing the Witness and Victim Protection Agency fall short of adhering to the justice principle for victims of Domestic Violence.

CONCLUSIONS AND RECOMMENDATIONS

The regulations outlined in the Regulation of Witness and Victim Protection Institutions, specifically addressing the safeguarding of victims of Domestic Violence as outlined in Law Number 13 of 2006 on the Protection of Witnesses and Victims, Law Number 31 of 2014 amending Law Number 13 of 2006, and Law Number 23 of 2004 on the Elimination of Domestic Violence, alongside Chairman Regulation Number 6 of 2010 detailing Procedures for Providing Protection of Witnesses and Victims, have not proven effective in ensuring adequate protection that aligns with the principles of justice, benefit, and legal certainty for victims of Domestic Violence.

The Witness and Victim Protection Agency's handling of regulations and execution related to the protection of Domestic Violence victims should reflect the recognition and preservation of human rights, which are constitutionally acknowledged under the 1945 Constitution. It is imperative that the formulation and implementation of protection measures for victims of Domestic Violence by the Witness and Victim Protection Agency strictly adhere to the principles of justice, benefit, and legal certainty. Clearly defining the duties and authorities assigned to the Witness and Victim Protection Agency is essential for actively preventing Domestic Violence, emphasizing the State's obligation to ensure a sense of security for all individuals.

REFERENCES

- Alperdorn, L. J. Van. (2008). *Pengantar Ilmu Hukum* (P. Paramita (ed.)).
- Arief, B. N. (2008). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan* (Cetakan II). Kencana Prenada Media.
- Chan, & Wing-Cheong. (2008). *Support for Victims of Crime in Asia*.
- Erwin, M. (2012). *Filsafat Hukum* (R. Grafindo (ed.)).
- Gosita, A. (1993). *Masalah Korban Kejahatan* (I, Cetakan). Akademika Pressindo.
- Irianto, S., & Nurtjahyo, L. I. (2006). *Perempuan di Persidangan Pemantauan Peradilan Berperspektif Perempuan* (I). Yayasan Obor Indonesia bekerjasama dengan Convention Watch, Pusat Kajian Wanita dan Gender UI, dan NZAID.
- Mansur, D. M. A., & Gultom, A. (2007). *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita* (I). PT Raja Grafindo Persada.
- Marzuki, P. M. (2010). *Metode Penelitian Hukum*. Kencana.
- Meliala, A. (2014a). Dukungan dan Pemulihan Bagi Korban Kejahatan Serta Praktik-Praktik Terbaik Perlakuan Untuk Korban. *Jurnal Perlindungan*, 1(4), 28–29.
- Meliala, A. (2014b). Dukungan dan Pemulihan Bagi Korban Kejahatan Serta Praktik-Praktik Terbaik Perlakuan Untuk Korban. *Jurnal Perlindungan*, 1(4), 35.
- Muladi. (2014). Hukum Pidana Dan Perlindungan Bagi Korban Kejahatan. *Jurnal Perlindungan*, 1(4), 4.
- Nasution, B. J. (2008). *Metode Penelitian Ilmu Hukum* (Cetakan II).
- Prayudi, G. (2012). *Berbagai Aspek Tindak Pidana Kekerasan Dalam Rumah Tangga*. Merkid Press.
- Rahmat. (2012). Kesaksian. *Majalah Kesaksian Edisi II*, 3.