

Role Of Witness And Victim Protection Agencies For Victims Of Sexual Violence

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ABSTRACT

This research aims to analyse the role of the Witness and Victim Protection Agency (LPSK) in providing legal protection to victims of sexual violence in Indonesia. This research uses normative juridical methodology with a qualitative approach to evaluate the effectiveness of protection provided by LPSK in the context of Indonesian law. Based on the findings, the legal protection provided by LPSK is based on clear regulations, including Law No. 13/2006 on Witness and Victim Protection and Law No. 12/2022 on the Elimination of Sexual Violence. However, the effectiveness of the protection is still affected by factors such as limited resources of LPSK, social stigma against victims, and low legal awareness in the community. Therefore, this study recommends increasing the capacity of LPSK, legal counselling, and eliminating social stigma to increase the effectiveness of protection for victims of sexual violence.

Keywords: LPSK, Legal Protection, Victims of Sexual Violence.

Introduction

The legal protection of witnesses and victims of sexual violence in Indonesia still faces significant challenges. Although the state guarantees the basic rights of every citizen to protection, in practice, victims of sexual violence often face difficulties in obtaining adequate protection. Article 1 The 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state of law that aims to serve the interests of society. Therefore, the state is obliged to provide protection to witnesses and victims, including in cases of sexual violence, in order to create legal certainty and justice.

In the context of sexual violence, victims are often in a very vulnerable position, both physically and psychologically. Law No. 31/2014 on Witness and Victim Protection provides a legal basis that regulates the rights of victims, such as protection of personal safety, legal assistance, and the right to provide testimony without threats. However, in reality, many victims are reluctant to report or provide testimony for fear of threats or intimidation from the perpetrator or other parties.

The Witness and Victim Protection Agency (LPSK) has a very important role in providing protection to witnesses and victims (Natalia, 2013; Pangestuti, 2017; Halawa, et al., 2024), including in cases of sexual violence. LPSK is tasked with providing physical and psychological protection, such as providing a new identity or relocation for victims who are threatened. However, although LPSK has the authority to provide such protection, it still faces many challenges, such as a lack of public legal awareness, limited resources, and a lack of coordination between related institutions.

The main problem that arises is that many victims of sexual violence feel they do not receive sufficient protection, so they choose not to report or not to testify (Aprilianda, 2017; Faisal, et al., 2023; Cahyani, et al., 2020; Noviana, 2015; Ginting & Wartoyo, 2023; Paradias & Soponyono, 2022; Khafsoh, 2021; Risal, 2022). Uncertainty regarding the protection they will receive and potential threats to their personal safety discourage victims from engaging in legal proceedings. In addition, a low understanding of the importance of the role of witnesses and victims in the judicial process further exacerbates this situation.

Thus, this paper aims to examine the role of LPSK in providing legal protection for victims of sexual violence, as well as identifying problems that still exist in the implementation of this protection. It is hoped that the results of this discussion can provide recommendations to improve the effectiveness of witness and victim protection, particularly in the context of sexual violence crimes in Indonesia. The hypothesis proposed in this research is: *Has the legal protection provided by the LPSK to victims of sexual violence in Indonesia been effective in providing security and legal certainty for victims?* This hypothesis focuses on the effectiveness of the protection provided by the LPSK in the context of Indonesian law, as well as what factors influence the success of this institution in carrying out the task of legal protection for victims of sexual violence.

This research is expected to make important contributions both theoretically and practically. Theoretically, this research will enrich the literature on legal protection for witnesses and victims of criminal offences, particularly in the context of sexual violence in Indonesia. Practically, the results of this research can provide recommendations to LPSK and related institutions to improve the quality and effectiveness of legal protection for victims of sexual violence. This research is also expected to provide insights to policy makers regarding the challenges in implementing legal protection and how the existing system can be improved to be more responsive to the needs of victims. The conceptual framework of this research combines two main theories, namely Legal Certainty Theory and Legal Protection Theory. Legal Certainty Theory underlines the importance of guaranteeing legal certainty for every individual, which includes protecting the rights of victims from threats, intimidation, or other acts of violence. In this context, this theory will be used to examine the extent to which LPSK can provide clear and predictable protection for victims of sexual violence. Meanwhile, Legal Protection Theory emphasises how the legal system should protect vulnerable individuals, such as victims of crime, from further potential threats. This theory will be used to evaluate the protection mechanisms implemented by LPSK, as well as how effective they are in safeguarding victims' rights and providing a sense of security.

Legal certainty

Legal certainty is a basic principle in the legal system that demands that rules be applied clearly and consistently. Normatively, legal certainty refers to the application of rules that are structured, do not cause doubts, and do not conflict with other norms. Utrecht (1969) states that legal certainty has two important aspects: first, clear rules regarding permissible or prohibited behaviours, and second, the protection of individuals from government arbitrariness, allowing them to know their rights and obligations (Jumiati & Ash-Shidiqqi, 2022; Rahmanto, 2017). Law must be objective and consistent in order to create a stable social order, where individuals can predict the consequences of their actions ((Jumiati & Ash-Shidiqqi, 2022; Rahmanto, 2017). The concept of legal positivism, which considers law as an autonomous and independent system, prioritises rules that are logical and applicable without being influenced by subjective factors. Jan Michiel Otto emphasises that legal certainty requires easily accessible rules, consistent application, and strict implementation of judicial decisions (Kusuma & Adhari, 2021). However, the application of legal certainty is often hampered by ambiguous regulations, inconsistencies in law enforcement, and limited resources.

Theory of Legal Protection

Legal protection is an integral part of a state of law, which is obliged to guarantee the rights of citizens. In accordance with Article 1 paragraph 3 of the 1945 Constitution, Indonesia as a state of law has an obligation to protect human rights. Legal protection aims to provide a sense of security and justice to individuals and society, both from violations of rights committed by other parties and arbitrary actions of the government. Satjipto Raharjo defines

legal protection as a state effort to ensure that individual rights are protected, so that people can enjoy their rights fairly (Raharjo, 2010). Legal protection is divided into two types: preventive, which aims to prevent violations or disputes through prevention efforts, and repressive, which focuses on resolving disputes that have occurred through judicial institutions (Gegen & Santoso, 2022). Roscoe Pound added that law is tasked with integrating various interests in society, which include public, social, and individual interests, in order to create a fair social balance (Asufie & Impron, 2021). Meanwhile, Setiono argues that legal protection also serves to protect the public from abuse of power and arbitrary actions by the authorities (Analiya & Arifin, 2022). Forms of legal protection can be reflected in legislation, supervision and law enforcement, and dispute resolution through mediation and arbitration.

Methods Research

This research uses normative juridical methodology with a qualitative approach. The qualitative approach was chosen because this research aims to gain a deeper understanding of the role of LPSK in providing legal protection to victims of sexual violence, as well as the challenges faced in its implementation. This research uses analytical description to describe and analyse the role of LPSK in the context of the existing legal protection system. The main source of data for this research will be obtained through a literature study, by reviewing relevant literature, regulations, and policies regarding the protection of witnesses and victims, particularly in the case of sexual violence crimes. This approach is expected to provide a clear picture of the effectiveness of legal protection provided by LPSK and the challenges that still need to be overcome in providing optimal protection for victims.

Result and Discussion

This study aims to evaluate the effectiveness of legal protection provided by the Witness and Victim Protection Agency (LPSK) for victims of sexual violence in Indonesia. Based on the findings, while the LPSK has performed its various protection functions reasonably well, several factors still affect its effectiveness in providing security and legal certainty for victims of sexual violence. One of the main findings of this research is that although the existing legal basis supports the role of LPSK, the implementation of legal protection is still faced with various obstacles that must be overcome so that the protection provided can be more optimal.

First, the success of LPSK in providing physical and psychological protection to victims of sexual violence can be seen from its authority in providing shelter, escort, and psychological and legal assistance. This is in line with Article 5 of Law No. 13/2006 jo. Law No. 31/2014 on Witness and Victim Protection (Witness and Victim Protection Law), which explicitly states that LPSK is responsible for providing physical and psychological protection for witnesses and victims whose safety is threatened. In addition, Article 7 of the Witness and Victim Protection Law provides a legal basis for LPSK to provide compensation and restitution to victims of sexual violence as a form of recovery for the losses they have suffered. However, despite LPSK's best efforts to provide protection, the implementation of victims' rights is still sometimes hampered by practical constraints that reduce its effectiveness.

Secondly, although physical and psychological protection is provided, there are challenges in terms of the limited resources owned by LPSK. As stated by Nurbayani et al. (2023), LPSK's limited capacity, both in terms of budget, professional staff, and physical facilities, has the potential to hamper the agency's efforts to provide optimal protection. This is due to the large number of incoming protection requests, which sometimes exceed the institution's capacity. Thus, although LPSK theoretically has the authority to protect witnesses

and victims, in practice, the existence of limited resources reduces the agency's capacity to provide maximum protection (Hidayat, 2016).

In addition, social stigma is also a major barrier to effective protection implementation. Many victims of sexual violence are afraid or embarrassed to report or access protection provided by LPSK, for fear of the social stigma attached to them. As pointed out by Swardhyana & Irawan (2022), this stigma often leads to victims feeling judged or blamed for what happened to them, which in turn discourages them from applying for protection. Although Article 5 of the Witness and Victim Protection Law stipulates that victims are entitled to protection without discrimination or fear, the reality on the ground shows that these social barriers affect LPSK's ability to carry out its duties effectively.

Third, the low level of legal awareness among the public, especially victims of sexual violence, is an important factor affecting the effectiveness of protection by LPSK. Based on research conducted by Putri & Suyanto (2021), many victims are unaware of their rights, including the right to obtain protection from LPSK. This often results in victims not reporting or not accessing available services. According to Article 6 of the Witness and Victim Protection Law, victims are entitled to protection, but without sufficient understanding of these rights, many victims end up not utilising the protection available. Providing more intensive and comprehensive legal education to the public is crucial to ensure that victims know how and the procedures to access assistance from LPSK (Nurbayani et al., 2023).

Fourth, the theory of legal certainty is also very relevant to understanding the effectiveness of protection provided by the LPSK. Legal certainty, according to Utrecht (1969), is a basic principle in the legal system that requires the application of clear and consistent rules. In this context, legal certainty in the application of protection by LPSK is very important so that victims feel safe and confident that their rights will be fulfilled. Article 5 of the Witness and Victim Protection Law emphasises the victim's right to physical and psychological protection, which must be applied clearly without any doubt. This is in line with the theory of legal positivism which emphasises a legal system that is logical, objective, and applicable without being influenced by subjective factors (Otto, 2011). Although the existing regulations are quite clear, barriers to consistent implementation and weak supervision in some areas mean that the application of protection is often uneven.

Furthermore, from a legal protection perspective, there are two types of protection that need to be considered: preventive and repressive. Preventive protection aims to prevent an offence or crime before it occurs, while repressive protection aims to sanction the perpetrator after the offence has occurred (Hadjon, 1987). In the context of LPSK, the preventive approach focuses more on the physical and psychological protection provided to victims to prevent further impacts of sexual violence. However, in many cases, repressive efforts are also needed, namely by ensuring that legal action against perpetrators of sexual violence is consistently applied, so as to provide a deterrent effect and prevent perpetrators from committing sexual violence repeatedly. This is in line with Setiono's (1995) view that legal protection should also serve to protect the public from abuse of power by the authorities, which in this case includes arbitrary actions against victims.

However, despite these challenges, LPSK has a strong legal basis to provide protection to victims of sexual violence. Law No. 13/2006 on Witness and Victim Protection, as amended by Law No. 31/2014, gives LPSK clear authority to provide physical, psychological, legal, and compensation and restitution protection. Specifically, Article 5 of the Witness and Victim Protection Law regulates victims' rights to physical and psychological protection, while Article 7 of the Witness and Victim Protection Law regulates victims' rights to compensation and restitution. Article 29 of the Witness and Victim Protection Law states that LPSK has the authority to receive requests for protection and make decisions regarding the granting of

protection, which forms the basis for the existence of LPSK in the criminal justice system in Indonesia.

In addition, Law No. 12 of 2022 on the Elimination of Sexual Violence further strengthens protection for victims of sexual violence, by providing a more comprehensive legal basis on a wider range of forms of sexual violence and stronger preventive measures. Although, LPSK has taken significant steps to provide legal protection for victims of sexual violence, the effectiveness of its protection still faces several challenges. Some factors that need to be considered for this protection to be more effective include increasing the capacity of LPSK resources, reducing social stigma against victims, and increasing public legal awareness, all of which require special attention. As stated by Swardhyana & Irawan (2022) and Nurbayani et al. (2023), without fundamental changes in these factors, the success of legal protection by LPSK for victims of sexual violence will be difficult to achieve optimally.

Conclusion

Based on the results of the research that has been conducted, it can be concluded that the legal protection provided by the Witness and Victim Protection Agency (LPSK) to victims of sexual violence in Indonesia has a strong legal basis and has been implemented with various significant efforts, including the provision of shelter, physical escort, and psychological assistance. Law No. 13/2006 on Witness and Victim Protection and Law No. 31/2014, as well as Law No. 12 of 2022 on the Elimination of Sexual Violence, provides a clear legal basis for LPSK to carry out its duties. However, the effectiveness of protection provided by LPSK to victims of sexual violence is still affected by several external and internal factors that hinder its optimal implementation. The main factors affecting the effectiveness of this protection include the limited resources owned by LPSK, the strong social stigma against victims of sexual violence, and the low level of public legal awareness about the rights of victims. Although LPSK has broad authority to provide physical, psychological, and legal protection, as well as compensation and restitution, challenges in implementing protection policies consistently and evenly across Indonesia remain a major obstacle in ensuring the agency's success in providing security and legal certainty for victims.

Suggestion And Recommendation

To increase the effectiveness of legal protection for victims of sexual violence, LPSK needs to strengthen its institutional capacity through increased human resources and supporting facilities. In addition, legal education and counselling efforts to the community need to be expanded, especially in areas with minimal legal information. The elimination of social stigma against victims should also be prioritised by conducting more massive and empathy-based campaigns. Finally, LPSK must strengthen coordination with relevant institutions such as the police, prosecutors' office, and judiciary to ensure more comprehensive and equitable protection throughout Indonesia..

Reference

- Analiya, T. R., & Arifin, R. (2022). Perlindungan hukum bagi anak dalam kasus bullying menurut Undang-Undang nomor 35 tahun 2014 tentang perlindungan anak di Indonesia. *Journal of Gender and Social Inclusion in Muslim Societies*, 3(1), 36-54.
- Aprilianda, N. (2017). Perlindungan anak korban kekerasan seksual melalui pendekatan keadilan restoratif. *Arena hukum*, 10(2), 309-332.

- Asufie, K. N., & Impron, A. (2021). Perlindungan Hukum Terhadap Notaris Dalam Pelaksanaan Jabatan Notaris Berdasarkan Teori Keseimbangan Berbasis Keadilan. *Journal of Law, Society, and Islamic Civilization*, 9(2), 86-103.
- Cahyani, Y. N., Verdiantoro, A. G., & Uma, F. (2020). Perlindungan Hukum Bagi Korban Tindak Kekerasan Seksual Kaum Tunarungu Dalam Perspektif Hukum Pidana. *Mimbar Keadilan*, 13(2), 218-228.
- Faisal, F., Ghazali, M., Umar, M. H., & Djafar, M. M. M. (2023). Perempuan Sebagai Korban Kekerasan Seksual: Apakah Hukum Sudah Cukup Memberikan Keadilan. *Jurnal Hukum & Pembangunan*, 53(1), 1-11.
- Gegen, G., & Santoso, A. P. A. (2022). Perlindungan Hukum Tenaga Kesehatan di Masa Pandemi Covid-19. *QISTIE*, 14(2), 25-38.
- Ginting, Y. P., & Wartoyo, F. X. (2023). Pencegahan dan Penanganan Kekerasan Seksual (PPKS) Dalam Rangka Penyelenggaraan Orientasi Karyawan Baru. *Jurnal Pengabdian West Science*, 2(01), 60-74.
- Halawa, N., Gultom, A., Hamonangan, A., & Marbun, J. (2024). Peran Lembaga Perlindungan Saksi Dan Korban (Lpsk) Dalam Sistem Peradilan Pidana Di Indonesia. *Jurnal Retentum*, 6(1), 127-136.
- Hidayat, E. (2016). Perlindungan hak asasi manusia dalam negara hukum indonesia. *ASAS: Jurnal Hukum Ekonomi Syariah*, 8(2).
- Jumiati, A., & Ash-Shidiqqi, E. A. (2022). Asas Kepastian Hukum Pelaksanaan Hukuman Mati di Indonesia. *Ius Civile: Refleksi Penegakan Hukum dan Keadilan*, 6(1), 26-36.
- Khafsoh, N. A. (2021). Pemahaman mahasiswa terhadap bentuk, proses, dan pandangan penanganan kekerasan seksual di kampus. *Marwah: Jurnal Perempuan, Agama Dan Jender*, 20(1), 61-75.
- Kusuma, A. E. P., & Adhari, A. (2021). Kepastian Hukum Ketentuan Pelaku Utama Dalam Kriteria Justice Collaborator di Indonesia. *Indonesian Journal of Criminal Law*, 3(2), 262-271.
- Natalia, S. (2013). Perlindungan Hukum Terhadap Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban (LPSK). *Lex Crimen*, 2(2).
- Noviana, I. (2015). Kekerasan seksual terhadap anak: dampak dan penanganannya. *Sosio Informa*, 52819.
- Nurbayani, S., Sartika, R., Wang, L., & Rahayu, T. (2023). Dualism of digital society's acceptance of spill the tea actions of victims of sexual violence. *Proceedings of the 4th International Conference on Law, Social Sciences, and Education, ICLSSE 2022*, 28 October 2022, Singaraja. <https://doi.org/10.4108/eai.28-10-2022.2326397>
- Pangestuti, E. (2017). Peran Lembaga Perlindungan Saksi Dan Korban Dalam Memberikan Perlindungan Hukum Terhadap Saksi Dan Korban. *Yustitiabelen*, 3(1), 1-23.
- Paradiatz, R., & Soponyono, E. (2022). Perlindungan hukum terhadap korban pelecehan seksual. *Jurnal Pembangunan Hukum Indonesia*, 4(1), 61-72.
- Putri, T. V. and Suyanto, B. (2021). The social construction of sexual violence for female politicians. *Jurnal Sosiologi Dialektika*, 16(2), 86. <https://doi.org/10.20473/jsd.v16i2.2021.86-96>
- Rahardjo, S. (2010). *Penegakan hukum progresif*. Penerbit Buku Kompas.
- Rahmanto, T. Y. (2017). Kepastian Hukum Bagi Pengguna Penyalahgunaan Narkotika: Studi Kasus di Provinsi Jawa Timur. *Jurnal De Jure*, 17(2).
- Risal, M. C. (2022). Perlindungan Hukum Terhadap Korban Kekerasan Seksual Pasca Pengesahan Undang-Undang Tindak Pidana Kekerasan Seksual: Penerapan dan Efektivitas. *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan*, 75-93.

Swardhyana, G. M. P. and Irawan, A. (2022). Evidence in sexual violence crime cases. International Journal of Educational Research & Social Sciences, 3(5), 1943-1950.
<https://doi.org/10.51601/ijersc.v3i5.491>

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Undang-Undang No. 12 Tahun 2022 tentang Penghapusan Kekerasan Seksual

Undang-Undang Nomor 31 Tahun 2014 tentang Perlindungan Saksi dan Korban