

# Implementation of Legal Protection for Witness to Criminal Actions of Corruption in Indonesia

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**Abstract.** Criminal cases depend on witness testimony. Witnesses need safety. Still, witnesses in certain cases have received threats. This paper examines the qualifications and rights of witnesses to corruption offences under Law 31 of 2014 and the application of legal protection for them in Indonesia. This research is normative. This study's data analysis is qualitative because it's narrative-descriptive. According to the study, corruption witnesses must meet formal and material conditions to be utilized as legal evidence. Articles 5, 10, 1 and 2 and 10A outline the witness's rights. Article 9 of the Law of the Republic of Indonesia Number 31 of 2014 grants witness rights from the beginning to finish of an investigation. Even if the threat isn't evident, witnesses to corruption crimes that accuse the suspect or defendant must be watched. Witnesses and their families are protected by the Witness and Victim Protection Agency.

**Keywords:** Corruption, Protection, Witness

## 1. Introduction

Corruption is a deadly virus that destroys the legal, political, economic, social and cultural systems. In order to create a successful eradication of corruption, law enforcement officers in Indonesia must pay attention to and protect witnesses to corruption crimes because success in eradicating corruption also depends on those who are brave and willing to reveal the truth. Several witnesses have appeared in Indonesia who have revealed criminal acts of corruption, but they are still not properly respected or protected, their fate has actually been threatened and pressured by various parties. For example, what happened to Agus Condro, who reported on the alleged bribery scandal in the election of the Senior Deputy Governor of Bank Indonesia, Miranda S. Goeltom, who was eventually fired by PDI-P for no apparent reason. Then no less tragic is the case of Edin Wahyudin, in 2001 ago. Edin reported the bribery case of three Supreme Court justices. He was instead made a defendant and sentenced to 3 months in prison and on probation for 6 months[1,2].

Another example is Stanley Ering, a witness who received a backlash for reporting allegations of corruption at the Manado State University by the Chancellor of Unima Phitolus. The attack was in the form of a counter-report by Phitolus to Stanley to the Regional Police who was then charged with Article 311 of the Criminal Code and he was found guilty. While Stanley was waiting for the prison execution order, he was later charged with defamation under Article 27 Paragraph (3) of the Electronic Information and Transactions Act[3].

Every citizen must testify freely and without coercion. Witnesses must recount a set of events relevant to a court case. Judges can make fair and impartial rulings based on witnesses and other evidence. Witnesses are crucial in criminal justice proceedings. Witnesses should get

comprehensive protection given their value. Protection of witnesses and victims is vital in criminal justice, in line with constitutional ideals that every citizen is equal before the law (equality before the law). This ensures legal protection and predictability, a good criminal justice process (due process of law), and a fair and clean judiciary that can promote a sense of justice in society. Free from fear and threats, witnesses and victims' testimony may uncover a crime[4].

The Witness and Victim Protection Agency, as state auxiliary bodies, implements the assurance of legal protection for witnesses. These bodies have the obligation and authority to provide protection and other rights to witnesses and/or victims. Several sections have not adequately regulated how witnesses are protected since the Witness and Victim Protection Agency cannot reach the police, attorney general's office, courts, and prisons. Other governmental organizations are also required to safeguard witnesses who disclose corruption crimes. The Corruption Eradication Commission is involved. What are the qualifications and rights of witnesses to a criminal act of corruption under Law No. 31 of 2014? How is legal protection for witnesses of criminal acts of corruption in Indonesia implemented?

## **2. Method**

Library research. Library research is data collecting or problem-solving based on an in-depth study of relevant library materials. This research includes library research because data sources can be found in journals, books, and other written documents..

## **3. Result & Discussion**

### **3.1. Criteria and Rights of Witnesses in Criminal Acts of Corruption according to the Law of the Republic of Indonesia Number 31 of 2014**

Being a witness in a criminal case is a legal obligation for everyone who is summoned by law enforcement officials, given the importance of witness testimony as a means of evidence in uncovering a criminal act. This is an effort to prevent and reduce the occurrence of a crime, because if it is not notified immediately then that person can be said to have given someone the opportunity to commit a crime.

Article 160(1)b of the Criminal Procedure Code allows the victim to testify in court. The victim who testifies incriminates the suspect or defendant (a charge). Victim witnesses can explain the underlying problem. This is a crown witness (kroen getuide).

In actuality, only a tiny number of witnesses are covered in the law. After revisions, witnesses' rights and obligations were protected. Law of the Republic of Indonesia Number 13 of 2006 concerning the Protection of Witnesses and Victims controls witnesses' rights and obligations.

Most witnesses are terrified of becoming victims or violent crimes. There's no guarantee of safety for witnesses who wish to disclose what they've observed. Witness rights in the criminal court system, such as justice, protection, and human dignity, have not been satisfied.

Article 1 Paragraph (27) of the Criminal Procedure Code specifies that witness testimony is evidence in a criminal case in the form of a witness's testimony about a criminal occurrence he heard, saw, or experienced, along with the reasons for his knowledge. The witness detailed what he heard, saw, and experienced. The witness doesn't need to know all the events as long as they saw, heard, or experienced them themselves. In Indonesia, the rights and obligations of binding witnesses in the judiciary have not been maximized, according to a scientific study. The Law on the Protection of Witnesses and Victims is good for witnesses and the community,

however there are still numerous complaints from the public about preserving witnesses' rights and obligations.

Considering that the courts in Indonesia in the last few decades have experienced ups and downs in terms of giving true testimony before a court. Not a few witnesses took the path not to testify and fled to another place or another country to hide. The Nazarudin case, the Century Bank case, the terrorism case, and others where the average witness in this case should be fugitives. The feeling of discomfort that they feel will happen to them so avoiding is the way to be taken to be safe in the trial. They violate the binding rights and obligations to testify, but on the other hand they actually demand safe protection, because witness testimony is one of the most important elements in criminal law, the rights of witnesses must also be guaranteed by the state, so they can provide a sense of security and freedom. from the pressure of giving testimony.

Witnessing and giving testimony before a court is the main duty or obligation of a witness. If the witness does not want to testify, he will be summoned according to the applicable law. Some were even taken forcibly because of their unwillingness to testify. This is done because a witness must carry out his obligation to testify at trial. One thing that really needs to be stated in the witness discussion is that which relates to the testimony of the witness himself, namely how far the breadth and quality of the witness must be obtained or explored by the investigator in the examination and then how many witnesses are needed in terms of the effectiveness of the testimony.

In order for the testimony of a witness to a criminal act of corruption to be used as legal evidence, two conditions must be met, namely:

#### 1. Formal Terms

The testimony of a witness can only be considered valid if it meets the formal requirements, namely the witness testifies under oath, is 15 years of age and over, has a healthy mind, is not related by blood or marriage from either party according to a straight lineage, is not in a marital relationship with any other party. Even though one party is divorced, there is no working relationship with either party by receiving wages unless the law provides otherwise, appearing before the court, taking an oath in accordance with their religion, at least 2 people are summoned to enter the courtroom and give information orally .

#### 2. Material Terms

The testimony of a person or one witness alone cannot be considered valid as a means of proof (*gut testis nulus tetis*) because it does not meet the material requirements, but the testimony of a person or one witness is sufficient as a means of proving one of the elements of the alleged crime. Explaining what the witness saw, he experienced himself, it was known the reasons the witness knew the events were not his own opinion or conclusion, they were in accordance with one another, and did not contradict common sense.

In accordance with the provisions contained in the Criminal Procedure Code, there are general requirements and special requirements. The general requirements are to be examined in good physical and mental health, to be able to refuse testimony because of their family relationship with the suspect to the third degree because it is based on blood relations or due to marriage or because of certain situations, they are those who are related by blood or family, family relationships due to marriage, and other people for some reason have the right to refuse to testify.

The specific requirement is that a witness is a person who can provide information for the purpose of investigating a criminal case which he has heard himself, seen and experienced for himself, if the witness who is summoned gives a proper and reasonable reason that he cannot

come to the investigator concerned, the investigator who conducts the examination comes to the witness' residence, the witness is examined without taking an oath unless there is reason to suspect that he will not be present at the examination in court (Article 116 Paragraph (1) of the Criminal Procedure Code and the witness is examined separately, but if the investigator considers it necessary) met with each other and must provide true information (Article 16 Paragraph (2) of the Criminal Procedure Code and the information given without pressure from anyone and or in any form. (Article 117 of the Criminal Procedure Code).

There are several main provisions that must be met by a witness as evidence that has provisions for proof, namely:

1. The witness must take an oath or promise.
2. The testimony of a witness that is valuable as evidence is what he saw, heard, and experienced for himself, not the witness's opinion which was obtained from the results of contrived thoughts.
3. Witness testimony must be stated in court.
4. The testimony of one witness alone is not sufficient as evidence in proving the guilt of the accused.

Based on the understanding stated in Article 1 Paragraph (26) of the Criminal Code, several conclusions can be drawn which are conditions for witnesses, including:

1. People who see or witness with their own eyes a crime.
2. People who hear for themselves the occurrence of a crime
3. People who experience themselves and or people who directly become victims of events that are criminal acts

The regulation of witnesses in the provisions of the Law of the Republic of Indonesia Number 31 of 2014 includes the rights obtained, guarantees not to be prosecuted for the reports they give unless the testimony they give is not in good faith, and the conditions that must be possessed by witnesses to obtain witnesses. protection of the Witness and Victim Protection Agency. The rights obtained by witnesses (including victims) according to Article 5 of the Law of the Republic of Indonesia Number 31 of 2014 are:

1. Obtain protection for the safety of his personal, family, and property, and be free from threats related to the testimony that he will, is currently, or has given.
2. Participate in the process of selecting and determining the form of security protection and support.
3. Provide information without pressure.
4. Get a translator.
5. Free from entangled questions.
6. Get information about the progress of the case.
7. Get information about court decisions.
8. Receive information in the event that the convict is released.
9. Confidentiality of identity.
10. Got a new identity.
11. Get a temporary residence.
12. Get a new residence.
13. Obtain reimbursement of transportation costs as needed.
14. Get legal advice.
15. Obtain temporary living expenses assistance until the protection period ends.
16. Get assistance.

These rights are exercised out of court and in the judicial process if the person concerned is a witness. If observed in Article 5 Paragraph (2), the rights as intended above actually only apply to certain cases according to the decision of the Witness and Victim Protection Agency so that the granting of these rights is selective and procedural through the Protection Agency and Victims. The specific cases referred to include criminal acts of corruption, narcotics/psychotropic crimes, terrorism crimes, and other criminal acts that result in the position of witnesses (and victims) being faced with situations that are very dangerous to their lives.

### **3.2.Implementation of Legal Protection for Witnesses of Corruption Crimes in Indonesia**

Article 184 of the Criminal Procedure Code gives witnesses a vital role in criminal justice. Witnesses are vital to upholding law and justice. Witnesses are vital in proving or revealing information that can be utilized to bolster an investigation, investigation, or court evidence.

Sociologically, all citizens must engage completely in social life since society is a system of institutionalized trust. Without this belief, social life can't function because there are no clear behavior standards. This belief is reflected in police, prosecutor, and judicial norms.

Human rights injured by others are legally protected. Legal protection is numerous legal remedies that must be provided by law enforcement officials to create a sense of security, both emotionally and physically, against disturbances and threats from any party.

Legal protection is a government function that gives communities security. According to Indonesia's 1945 Constitution, the state protects human rights. Article 28I Paragraph 4 of Indonesia's 1945 Constitution. The importance of legal protection for every community led to the promulgation of Republic of Indonesia Law Number 13 of 2006 concerning the Protection of Witnesses and Victims on August 11, 2006. The protection of witnesses and victims in Indonesia's criminal justice process has not been specifically regulated. Articles 50-68 of the Criminal Procedure Code safeguard suspects and defendants from human rights breaches. The law should safeguard witnesses and victims.

Witnesses were first ignored. In corruption cases, his and his family's safety depends on his testimony. The Criminal Procedure Code is burdensome for suspects, defendants, and prisoners. In 2003, the administration showed a limited willingness to safeguard witnesses. The only protection it offers is in the form of government regulations, namely Government Regulation 24 of 2003 concerning Procedures for the Protection of Witnesses, Investigators, Public Prosecutors, and Judges in Criminal Acts of Terrorism and Government Regulation 57 of 2003 concerning Procedures for Special Protection for Whistleblowers and Witnesses to Money Laundering.

Protection given to witnesses can be given at the stage of investigation, investigation, prosecution, and or examination in court, on the basis of the initiative of law enforcement officials, security forces, and or requests submitted by victims. With the existence of legal protection from the Witness and Victim Protection Agency, the guarantee of a sense of security for witnesses is getting stronger.

Protection of witnesses in Indonesia is contained in several rules, both at the statutory level and other implementing regulations. At the statutory level, the protection of witnesses is contained in at least three laws. First, in the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is explained that the community can be given legal protection that participates in assisting efforts to prevent and eradicate corruption. One form of participation is by being a witness or a reporter.

Without witnesses who provide information and information from the reporter, corruption cases will not be settled from the stage of investigation, prosecution, and trial examination as expected. This will hurt society and the government's efforts to fight corruption.

Indonesian law No. 31 of 1999 on the Eradication of Criminal Acts of Corruption protects whistleblowers and witnesses to criminals.

#### Article 21

Anyone who intentionally prevents, hinders, or thwarts directly or indirectly the investigation, prosecution, and examination in court against a suspect or defendant or witnesses in a corruption case, shall be sentenced to a minimum of 3 (three) years in prison and a maximum of 12 years. (twelve) years and or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

#### Article 24:

A witness who does not fulfill the provisions as referred to in Article 31, shall be sentenced to a maximum imprisonment of 3 (three) years and or a maximum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah).

#### Article 31:

(1) During the investigation and examination in court, witnesses and other persons concerned with criminal acts of corruption are prohibited from mentioning the name or address of the Pioneer, or other matters that may give the identity of the complainant to be known.

(2) Before the examination is carried out, the prohibition as referred to in Paragraph (1) is notified to the witness and other persons.

Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission which stipulates that the Corruption Eradication Commission is obliged to provide protection for witnesses who submit reports regarding the occurrence of corruption. The definition of "providing protection" in this provision includes the provision of legal protection, security guarantees, even if it is necessary to change the identity of the reporter.

The enactment of the Law on the Corruption Eradication Commission is a mandate from the Law of the Republic of Indonesia Number 31 of 1999 which requires the establishment of a commission to eradicate corruption. Eradication of criminal acts of corruption needs to be carried out in an extraordinary way because corruption is included in an organized crime.

Witnesses or reporters whose lives are threatened must be protected in a safe house owned by the Corruption Eradication Commission. The Law of the Republic of Indonesia Number 30 of 2002, Article 15 letter a states that if the Corruption Eradication Commission is obliged to provide protection to witnesses or reporters who submit reports or provide information regarding the occurrence of criminal acts of corruption.

Witnesses who are placed in safe houses are protected (witnesses or victims or reporters) in special conditions whose life safety is very threatened. There is a consequence that protected communication with other parties will certainly be limited. The placement of witnesses and reporters is also intended to protect against acts of violence and threats that can affect the information in the case that he reports or knows about. Safe homes use high standards, different from homes in general.

In addition to being regulated in the law, guarantees for the protection of witnesses and reporters are also contained in the Circular Letter of the Supreme Court (SEMA) Number 4 of 2011 concerning Treatment for Reporting Witnesses and Perpetrators who Cooperate in Certain Criminal Cases. The Supreme Court in this SEMA asks the judges that if they find a reporting witness or a cooperating witness, they can be given special treatment in the form of leniency and/or other protection.

The terms whistleblower and justice collaborator emerged from the Circular Letter of the Supreme Court Number 4 of 2011 concerning the Treatment of Criminal Whistleblowers (Whistleblowers) and Witnesses of Cooperating Perpetrators (Justice Collaborators) in Certain Criminal Cases. Certain criminal acts referred to in SEMA are criminal acts of corruption, terrorism, narcotics crime, money laundering, human trafficking, and other organized crimes. The SEMA was issued due to the unclear application of Article 10 of the Law of the Republic of Indonesia Number 13 of 2006.

The Law of the Republic of Indonesia Number 13 of 2006 states that witnesses, victims, and reporters cannot be legally or civilly penalized for reports or testimony given, given, or to be given. This provision does not apply to bad-faith witnesses, victims, and reporters. Good faith is hard to verify. This differs from how a suspect-witness is treated.

The Law of the Republic of Indonesia Number 13 of 2006 concerning the Protection of Witnesses and Victims declares that a witness or victim has the right to acquire protection for his personal, family, and property safety and is free from threats linked to his testimony. Even single witnesses and victims can choose their own safety and security.

#### **4. Conclusion**

A corruption witness must meet formal and material conditions to be utilized as legal evidence. Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims governs corruption witness rights. Articles 5, 10, 1 and 2 and 10A outline witnesses' (including victims') rights. Article 9 of the Law of the Republic of Indonesia Number 31 of 2014 protects witnesses throughout the inquiry stage.

Even if the threat is not evident, witnesses of corruption crimes that accuse the suspect or defendant must be watched. The corruption case is serious because it concerns wealthy, powerful, or popular persons. Witnesses and their families are protected by the Witness and Victim Protection Agency. Law enforcement will be told reporters and witnesses can't be prosecuted. In a trial, witnesses are protected and strictly guarded to prevent undesirable events.

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