ISSN NO. 2320-5407

Journal homepage: http://www.journalijar.com

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH

RESEARCH ARTICLE

THE ESSENCE OF ESTABILISH WITNESS AND VICTIM PROTECTION AGENCY IN INDONESIA

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Manuscript Info

Manuscript History:

Received: 15 July 2015
Final Accepted: 22 August 2015
Published Online: September 2015

Key words:

Role of Witness, Victim, and Prottection

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Abstract

One form of protection to society is One form of protection to society is to be done by providing legal protection through a judicial process in case of criminal offense or referred to as the criminal justice system (criminal justice system). In a judicial process, the main character is the perpetrator or the suspect / accused of crimes. If a person has been prosecuted based on evidence that has been obtained from the investigation team that he has changed the status of the accused. This defendant who then will undergo a legal process in court. A defendant has the right to obtain legal assistance even since he was still a suspect. The role of a witness in any proceedings of criminal case is very important because often witness testimony can influence and determine the tendency of the judge's decision. A witness has the ability that can determine which way the verdict. This gives effect to every witness so that it always gets great attention by the actors involved in the trial as well as by community legal observers.

INTRODUCTION

Indonesia as a country that has the ideal state of law must provide protection of human rights for its citizens and in case of violation of human rights, should be provided institution that is able to deliver justice in the form of justice that is independent and impartial. Protection of human rights are promoted widely in order to promote respect for and protection of human rights as an important trait in a country of law. Every human being from birth bears the rights and obligations that are free and rights. The formation of the country and the holding power of a country should not diminish the meaning of freedom and the rights of humanity.

One form of protection to society is to be done by providing legal protection through a judicial process in case of criminal offense or referred to as the criminal justice system (criminal justice system).

In a judicial process, the main character is the perpetrator or the suspect / accused of crimes. If a person has been prosecuted based on evidence that has been obtained from the investigation team that he has changed the status of the accused. This defendant who then will undergo a legal process in court. A defendant has the right to obtain legal assistance even since he was still a suspect

A defendant can be imprisoned by the decision of the judges. The judges decide a case should be based on the evidence in accordance with predetermined by law. Witness testimony is one of the main evidence in the process of settling disputes in court. Djoko Prakoso suggests that the presence of the witness plays an important role and in many cases will determine the outcome of the various cases. Witness testimony given before the court is one of the important evidence into consideration the judge in deciding a case.

Disclosure *actus reus* in the trial process is also important in the formation of the judges conviction. Surely witness testimony as legal evidence is an important element in the criminal justice process that helps expose the truth assembly material.

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The phenomenon of the reluctance of the people who are supposed to be witnesses to give testimony in court testimony became commonplace phenomenon before the birth of the Witness Protection Act. This is due to the many instances where someone who witnessed it can be suspect. It can be observed in the case of Khairiansyah, former auditor Audit Board of the Republic of Indonesia (in Indonesia call BPK), which together with the Corruption Eradication Commission, ((KPK) unload cases of bribery in the General Election Commission (KPU) in November 2005. This case became an exceptional case but a few days later on November 21, 2005, Khariansyah named as a suspect in a bribery case Religious Community Endowment Fund (DAU) by the District Court.

The importance of witness testimony in a criminal justice process can also found in the provisions of Article 189 (4) of the Criminal Procedure Code which states that "the defendant testimony alone is not enough to prove that he is guilty of committing acts that indicted him, but must be accompanied by valid evidence."

The magnitude of the role of the witness is clearly visible in the Criminal Code, but on the other hand, the Criminal Code has not been set regarding aspects of protection of witnesses therefore formed a legislation that provide the setting for the protection of witnesses, namely Law No. 13 of 2006 on Witness and Victim Protection (UUPSK), and according to the provisions of Article 4 UUPSK emphasized that the protection of witnesses and victims aims to provide security to witnesses and / or victims in providing information on any criminal proceedings.

The protection of witnesses, because it becomes important, since the witness has been often intimidated and pressure from various parties. This provision guarantees protection to provide guarantees for witnesses to reveal the truth without any pressure from any party.

Protection of the rights of witnesses is still considered to be less and this is very unfair, especially associated with its role in clarifying the problems in the trial. Protection of witnesses has not been given as the protection of the rights of suspects or defendants as stated by Amir Shamsuddin that:

> "Our legal rights of the accused in particular Criminal Code put above the rights of witnesses and victims so that in any "due-process" the accused is placed in its final position to defend himself. These circumstances make victims and witnesses feel marginalized so that law enforcement is fair and true never materialized. That is why the protection of witnesses and victims need serious attention".

After the enactment of Law No. 13 of 2006, is expected to witness protection and victim can be further optimized so as to support the creation of a fair criminal justice process. Every country in the world has a legal system of each as well as the criminal justice system as part of its legal system. The legal system has more elements, Lawrence M. Friedman the thought elements of a legal system that is law essence, the legal structure and legal culture. These three factors contained in this legal system that greatly affect the law enforcement process in a country.

Associated with the protection of witnesses and victims in Indonesia, an assessment of the operation of the system of legal protection as part of the criminal justice system can be assessed by looking at the realities associated with these three elements.

In general the formation of the Witness Protection Act which is intended both as a means to accommodate protection (legal protection) against witnesses and victims in the justice system integrated in Indonesia who have been witnesses and victims do not feel protected. For it with the Witness Protection Act through the Agency will be able to realize all what the rights of the witnesses and victims to get better protection from threats, security as well as their souls.

Look to the points contained in the Witness Protection Act and the Victims, many provisions altogether more to be conservative or non-fulfillment of a sense of fairness to witnesses and victims in full, for the protection of witnesses and victims is a key element in realizing the rule of law in Indonesia. It is characterized by many there are provisions that are more partial to the interests of the political elite or the government, and also the presence of clauses that give rise to multiple interpretations so that later could weaken the position of the protection of the rights of witnesses and victims of which are the original purpose of the establishment of this law.

B. PROBLEMS

From the description of the background of the problems above, the formulation of the problem in this paper is " How the esssence of the establishment of the Witness and Victim Protection Agency associated with law enforcement in Indonesia?

C. DISCUSSION

Essence in Indonesian dictionary meaningful reality in the sense of truth (essential). Itself is the ultimate way to achieving the goal, watching the glittering light nan, from ma'rifatullah hopeful that the essence of science is a science that is Laduni conscience[1]. All beings are divided into two principles which form (formal nature or *morphe*, forma) and material (nature of the material or *Hule*, material). In addition there are two (2) another principle, namely the principle of the internal form of the causes and principles of the external form of purpose so that the nature of the universe on the four principles of reality, namely the principle of material (the basis of all beings), the principle of formal (form), the principle of efficient (execution) and principles final (destination).

Aristotle's view of the essence creation of the universe is then applied also in the fields of human life, including the life of the state. Aristotle argued that a policy consists of the smallest units as parts. The smallest unit is the family then there is a larger unit that villages form a single unit and have a head. Families and groups these together form the country / policy. Humans who become citizens of the policy should be active in political activities and the highest human virtue in obedience to the law of the policy is the policy both written and unwritten, and disobedience will give birth to the demands of the law of the state. This is the formal essence.

Legal Compliance by the society conducted in order to achieve justice that justice according to the law in Aristotle's view is commonly justice. This is the formal essence of a society in a policy adherence. However, Aristotle did not stop at this. He argued also that in addition to general justice there is also a special justice as a moral virtue that determines each individual attitudes towards a certain field such as attitudes of individuals in carrying out sale and purchase transactions, in carrying out the positions and divide public property, in making an interpretation of the law. Essence is what is the essence materially.

The discussion about the nature of formal and material become a reference in its assessment and further elaboration on the whereabouts of the Witness and Victim Protection Agency in Indonesia. Materially, throughout the life of the nation can not be separated from the values of *Pancasila*. The values of *Pancasila* is the unity of the cultures of Indonesia which is believed to contain the truth, statutes and benefit subsequently used as the basis and motivation in the attitude, behavior and actions in socety/community and nation to achieve national objectives as contained in the Constitution NRI 1945 ,

Pancasila as the outlook and philosophy of life, and the soul of the nation *(volkgeist*) [2] is a guideline in the implementation of national development in order to be able to stand firm and to know the direction, goals within about and solve problems. Motion pace of development always brings a side-effect on the lifestyle of the people who have a positive impact or negative.

Pancasila as the state ideology (science of ideas) must be lived and practiced significantly by each organizer of the State, state institutions, agencies kemayarakatan and every citizen of Indonesia, so that national goals and ideals of the nation of Indonesia as stated in the Preamble of the Constitution NRI 1945 can be realized. *Pancasila* is the source of all sources of law in Indonesia, that *Pancasila* as the basic staple and a source of law to be called State of *Pancasila* Law.

Pancasila further into the soul and spirit of the Constitution NRI 1945 as the constitutional basis for realizing our national goals and national development goals. All legislation must be based on *Pancasila* and the Constitution NRI 1945. In Article 1 (3) confirmed that Indonesia is a country of law. The existence of the law means justice desired Indonesian nation, is the appropriate legal justice existence as a State law.

The logical consequence of a legal substance that is regulated in the formulation of Article 1 (3) NRI Constitution of 1945, emphasized the need for equitable law enforcement against any actions, measures and policies adopted by the government (in the widest sense) [18.] in accordance with the provisions of the laws and regulations applicable.

Law comes from a legitimate government in a sovereign state. The function of government in the implementation of national life by taking into account all the circumstances and the need to implement the legal establishment and endorsement by making history and political and public life as the basis for consideration but the important thing is the awareness of the law underlying the establishment of justice. Awareness of justice that is the condition that the law continues to be recognized as legal and still have differences with power even though he is set by a rule. Unification of justice and positive law is a unity that can be analogized as a unity between body and soul are united in man.

[1]Ibnu Ruslan, ***Hakikat Hukum Islam***, Artikel, Semipalar ,Jakarta. 2001. www.semipalar.co.id. Akses tanggal 20 Juli 2014

[2] Munir Fuady, ***Dinamika Teori Hukum***, Jakarta, Ghalia Indonesia, 2007, p. 166 – 168

Pancasila as the values and ideologies in the life of the nation into a foundation that has a role through its enforcement formally and materially. Formally, the embodiment of *Pancasila* is the absorption values in the formal provisions in the operative state starting from legislation to the official policy of the apparatus of state officials while *Pancasila* materially embodiments can be seen from the structured and systematic understanding in the individual's daily behavior day which means that the values of *Pancasila* is the ideal norms upheld by all citizens of Indonesia.

Justice is one embodiment of *Pancasila* both formal and material, which means that justice is the soul of the legislation and the spirit for the holding of national life. Existence of justice consequences must to make justice as an important value in human life in relation to God, individuals, communities, governments and the universe. Law as a reality formal and justice as the essence of the material into two elements are intertwined and become a "condition sine qua non" for the realization of a life which is the goal for the holding of national and state listed in the Preamble to the Constitution NRI 1945 the welfare and legal protection. Justice that is expected to be able to achieve that is substantive justice and procedural fairness.

Substantive justice and procedural fairness are two types of justice ever proposed by John Rawls. In constructing his theory Rawls departs from a hypothetical position where when the individual enters a social contract that has freedom (liberty).

Hypothetical position is called the original position (original position). The original position is an initial status quo which confirms that the fundamental agreements reached in the social contract is fair (fair). Based on the fact the original position (original position) then gave birth to the term "justice as fairness". Confirmed by Rawls that even in this theory uses the term fairness but does not mean that the concept of justice and fairness are the same. One form of justice as fairness is the view that the position of each person in the initial situation when entering as a deal in the social contract that is rational and equally neutral. Thus, justice as fairness is also called the contract theory.

Outlines Rawls's theory of justice as fairness was as follows: "I then present the main idea of justice as fairness, a theory of justice that generalizes and carries to a higher level of abstraction the traditional conception of the social contract". That is, the main idea of justice as fairness is a theory of justice that generalize and bring to a higher abstraction is the concept of the social contract. Rawls then continued, "The primary subject of justice is the basic structure of society, or more exactly, the way in which major of social institutions distribute fundamental rights and duties and Determine the division of advantages from social cooperation". That is, that the main point of justice is the basic structure of society, more precisely, the way how the major institutions of society regulate the rights and obligations of the base as well as how to determine the distribution of social welfare of a cooperation. Therefore, "its effects are so profound and present from the start". It means that the result is very extreme and presence from the beginning, because as a starting point. Concretely, the influence of "the basic structure of society" it was great to be able to determine how the justice itself

Further Discussed by Rawls, an institution in society that can be understood in a way that is: first, as an abstract thing that is a form of behavior that is embodied in the legal system; and second, the realization of the thoughts and actions of certain people at Certain times and places on the formulation of forms of behavior (actions) that has been set in the rules. With other words, Rawls concludes that "the basic structure of society" that is a "public system of rules" the which can be seen in two forms "system of knowledge" (or set of public norms) and as a "system of action" (or set of institutions). Therefore it can be argued, if "the basic structure of the society" is composed of a system of institutional fair (a just system of institution) and the provisions of political fair (a just system of political constitution) then justice as a fairness will Be Achieved. Also Rawls suggested that the term formal justice is replaced by the term "justice as regularity (justice as regularity)". The term is Considered to be more Appropriate than "formal justice (formal justice) [3]. Rawls continues that formal justice can be Increased to justice substance (material). When the formal justice it is a matter of merely comply with the legal system, it's just one aspect of the rule of law, a concept that will support and Ensure expectations are legitimate (legitimate expectation) of public justice.

Rawls one of the supporters of formal justice. Consistency in putting the law as the basis of the implementation of the rights and obligations of individuals in social interaction could be a signal for this. Rawls believes that equity-based rules, even though a formal administrative nature remains important because basically it provide a minimum guarantee that every person in the same case should be treated equally. In short formal justice requires a minimum common ground for all people. Rawls also believe that the existence of a community is dependent on formal regulation through laws and institutions supporters. Laws and regulations that are very important, that the consistency of the law enforcement agencies in the implementation of laws and unfair though

3 ***Ibid,*** p.76.

will greatly help citizens to learn how to protect themselves from a variety of adverse consequences caused by unjust laws.

Rawls argued also that although the necessary formal justice can not be fully and encourage the creation of a well-ordered society (well ordered society), the formal justice tend to be imposed unilaterally by the authorities. Therefore, however important formal justice, Rawls did not want to stop at this level. Rawls crossed this formalism to formulate a theory of justice that is more giving place to the interests of all parties that a particular public policy affordable. For that Rawls believes that a theory of justice that is both a theory of justice that is a contract that guarantees the interests of all parties fairly. Thus, the whole idea of Rawls on justice and the various implications in the socio-political and economic restructuring should be placed and understood in the perspective of the contract.

Rawls argued that it is unfair to sacrifice the rights of one or a few people just for the sake of greater economic benefits for society as a whole. This attitude is contrary to justice as a principle of fairness which demands the same freedom as the basis underlying the social welfare arrangements. Therefore, economic considerations must not conflict with the principles of freedom and equal rights for everyone. In other words, the social decisions that have ramifications for all members of society must be made on the basis of rights (rights based weight) than on the basis of the benefits (good-based weight). Only then justice as fairness can be enjoyed by everyone

By taking lessons from the failure of earlier theories, Rawls tried to offer some form of settlement associated with the problems of justice by building a theory of justice based contract. According to him, an adequate theory of justice should be established with the contract approach, in which the principles of justice are chosen together really is the result of a mutual agreement of all persons who are free, rational, and equal. Only through contractual approaches a theory of justice able to guarantee the exercise of rights and obligations and distributes it equally to all people. Therefore firmly Rawls states, a good concept of justice must be contractual, consequently every concept that is not based on contractual justice must be set aside in the interests of justice itself. In this context Rawls calls "justice as fairness" that marked the principle of rationality, freedom and equality. Therefore we need the principles of justice which prefers the principle of the right rather than the principle of utility.

K. Bertens argued that the meaning of lexical (dictionary) just means also fair but there are differences, just means fair according to its contents (the substance) or the so-called substantial justice (substantive justice), while the mean fair is fair according to the procedures or procedural justice (procedural justice). Examples: lottery running fair (procedural fairness), followed by the rich and the poor turned out to win the rich, then from the side of the procedure is already running fair, but in terms of the results is considered completely unfair (unjust). Fairness means fairness based on reasonable procedures (not engineered or manipulated).

So a strong emphasis on the importance of giving equal opportunity for all parties, shows that Rawls tried to make justice is not trapped in extreme capitalism on the one hand and socialism on the other. Justice must be understood as fairness, in the sense that not only those who have the talent and ability of the better are entitled to enjoy various social benefits more, but these benefits also have to open up opportunities for those who are less fortunate to improve his prospects. In connection therewith, liability morality "excess" of those who are fortunate to be placed in the "frame of interest" group of those less fortunate. "The different principle" does not demand the same benefits (equal benefits) for everyone, but the benefits are reciprocal (reciprocal benefits), for example: a skilled worker would be more appreciated than the unskilled workers. Here justice as fairness strongly emphasizes the principle of reciprocity, but it does not mean just "simply reciprocity", where the distribution of wealth is done without seeing differences in the objective differences between members of the public. Therefore, in order to ensure an objective rule of the justice that is acceptable as fairness is pure procedural justice, which means that justice as fairness should proceed at once

One of the efforts to bring about justice in society is through the criminal justice. In the criminal justice system, police, prosecutors, courts, lawyers and correctional institutions is a law enforcement agency that has a functional relationship is very close. The fifth institution should be able to cooperate and coordinate well to achieve the objectives of this system, namely tackling crime or crime control is within the tolerance limits of acceptable community.

All components of the criminal justice system, including courts and correctional institutions, partly responsible for carrying out the task of tackling crime or crime control however, given the duties and authority of each, specifically crime prevention task more associated with the sub-system of the police. While other tasks are more related to the subsystem justice and prisons. The task of completing the crime is related to the duties of two components of the system, namely the police and prosecutors (on stage prajudisial) and the courts (the judicial stage).

To avoid confusion duty, abuse of authority, overlapping authority, as well as the failure to achieve the task of completing the crime that occurred in the community, there needs to be a law in which among other things

contains what law enforcement officials that the country was given the task of criminal law enforcement, how the procedure for enforcement, what are the duties and obligations, and what the implementation of sanctions if it does not fit the way or duty and authority. The law is known as the formal criminal law or criminal procedure. \

Wirjono prodjodikoro formulated the law of criminal procedure as a series of regulations containing bodies how the ruling government, the police, the prosecution, and the court must act in order to achieve the objectives of the state by holding criminal law[4].

Juridical-normative, either in *Herzeine Inlands Reglement (HIR)* and the Code of Criminal Law (Criminal Code), has set about the task and authority and each institution should implement them, but discord and disharmony duties and authority between institutions in our criminal justice system is still frequently arise. Such disputes are sometimes very tapered, causing cynicism in society and can also result in the emergence of the decisions of judges who do not meet society's sense of justice. Lately, the law enforcement process as a discourse in society again become a topic of debate.

Talk about the criminal justice system have only always focused on the suspect / accused and law enforcement officers from the police began to Penitentiary while on the other there are still elements or other elements that are not less important in the criminal justice process that witnesses and victims. The role of witnesses and victims is crucial in the disclosure of a crime. Testimony given by witnesses and victims is evidence that is needed in order refutation of the accused as well as an important factor in seeking and finding the truth of material in a process of criminal justice.

The important role of witnesses and victims is causing law enforcement officials should be able to be able to present witnesses and victims in the process of examination in a criminal justice but the problems often faced by law enforcement officers is difficult to present witnesses and victims in court. The difficulty is partly due to many witnesses and victims who fear to be a witness for fear of threat, danger and intimidation they might get when testifying to a crime. Another factor is that the witnesses are reluctant to back and forth to court while they have an activity that can not be postponed or considered more important to their lives.

Search and discovery of truth material that puts witnesses and victims, who are very important in reality has not been followed by the protection of witnesses and victims so that they can give information with a sense of security in view of witnesses and victims in fact is not the guilty party in a crime required by witnesses and victims become urgent to get attention.

Legal protection of witnesses and victims in this case requires an arrangement that is more aligned to them. The development of the substance of the law relating to criminal procedure, especially in the provision of legal protection to witnesses and victims was still very minimal. Legal arrangements regarding witnesses and victims in Indonesia, especially in the criminal justice system is still often ignore the presence of witnesses and victims. One example that could be addressed in this regard is the setting in criminal procedural law (Criminal Code) in which witnesses and victims is set very minimal and vague even forgotten because of the system established by the law is more oriented to the perpetrator (Offender oriented) and not victim-oriented (victim oriented). Weaknesses in the regulation of the legal substance of the witness and the victim was still found in the Law of Protection of witnesses and victims, among others, the setting in which this Act that put the victim in a position as a witness rather than as the injured party and the need to obtain legal protection.

Article 17 of Law No. 39 of 1999 on Human Rights, namely: "everybody without any discrimination, has the right to obtain justice by filing a petition, complaint, and a lawsuit both in criminal cases, civil, and administrative and prosecuted through the judicial process that is free impartially in accordance with the procedural law which guarantees an objective examination by judges who are honest and fair to obtain a fair and correct decision. This provision can be attributed also to the rights of witnesses and victims so that the protection of witnesses and victims are closely related to the enforcement of Human Rights so that the issue of witnesses and victims in criminal law and the criminal justice system is an issue that is very complex because it involves social issues and human and impact broad.

In human right, everyone has the right to obtain justice, as mentioned in the issue of witnesses and victims in criminal law and the criminal justice system is a very complex issue because it involves social and humanitarian issues as well as a broad impact. Therefore, the parameters of fairness in the criminal justice system should not only look at how heavy the offender be subject to criminal, but how witnesses and victims can play an active role in the judicial process and to obtain settlement of the case in accordance with what they are entitled, that is to say the rights of witnesses and victims respected and fulfilled.

4 Wirjono Prodjodikor,. ***Hukum acara pidana di Indonesia***,Sumur Batu, Bandung, p. 67

Law Enforcement concept should not forget the interests of victims and witnesses. Criminals have become the only orientation as well placed as the only stakeholders in the criminal justice process. Offenders are placed as justice seekers who are dealing with the country for having violated the state. This means that the perpetrator act solely seen as acts that violate the rights of the state. In the interests of others, witnesses and victims were ignored and not placed as parties also have an interest because it has suffered a loss as a result of the act the perpetrator and has been instrumental in uncovering the perpetrators of crimes committed.

The concept of the rule of law in criminal proceedings premises justice is more dominant orientation directed to offenders is one of the characteristics of the criminal law concept that embraces justice retributi. Criminalization be understood merely as a form of retaliation for acts violating criminal law. The criminal justice system should ideally be a system that is not only oriented to the perpetrators but also oriented to the victims or witnesses. In this context, institutional Witness and Victim Protection Agency to be important and should be built in such a way that in carrying out the duties, functions and authority, it can be synergistic with the functions and authority of other law enforcement agencies in the criminal justice system.

Witness and Victim Protection Agency (Agency) was established by Law No. 13 of 2006 on Witness and Victim Protection. In general explanation of the Law on Witness and Victim Protection said that the Criminal Procedure Code Article 50 through Article 68 only regulates the protection of suspects and defendants against possible infringement of their rights. The principle of equality before the law in general explanation Act Witness Protection gives the mandate that the criminal justice process guarantees legal protection.

Agency presence, providing hope for the rule of law and the search for truth and justice by optimizing the workings of the criminal justice system in Indonesia. Space legislation rules relating witness protection is still narrow, because it applies only to specific cases or to all types of cases. The presence of Law No.13 of 2006 on Witness and Victim Protection about to umbrella all rights pertaining to witnesses and victims. That is a demanding need for all regulations on witness and victim harmonized into Law No. 13 of 2006. Act Witness and Victim Protection basically not only complement the various regulations governing the protection of witnesses and victims, but also the implementation is done by the Agency; an institution that is mandated to carry out the duties and authority of the protection of witnesses and victims. Among the goals of the Agency was set up is to realize that professional institutions in providing protection and fulfillment of the rights of witnesses and victims; strengthen the legal basis and the ability to fulfill the rights of victims and witnesses, realize and develop networking with stakeholders in order to fulfill the rights of witnesses and victims, and to create conducive conditions and community participation in the protection of witnesses and victims.

Abdul Haris Semendawai, members of the Agency in an interview dated October 17, 2014 suggests that the challenge juridical faced in the legal protection of witnesses and victims are the rights of suspects and defendants previously recognized in criminal procedure that has long been affected by the imposition of the International Convention on the Civil and Political rights. Civil and Political Rights of 1966 set forth in General Assembly Resolution 2200 A of the United Nations, December 16, 1966, the number of 53 chapters. This convention was created departing from the principles of the dignity inherent in every human being.

The principles in the convention set forth in the interview above basically been proclaimed first in the United Nations Charter on the recognition of the inherent dignity and rights of the same and inseparable from all members of the human race and it was for the United Nations is the foundation of freedom, justice and peace in the world.

Criminal procedure are affected by the convention of Civil Rights and Politics can not be considered obsolete for today because there is no material criminal procedural law that are still relevant but nevertheless Indonesia needs a new paradigm that give rights to witnesses who contributed to uncover a crime, or victims of crime that suffering due to negligence or inability of the state in ensuring security and order in society. Rights of suspects, accused, and convicted only have the assurance and other forms of protection, let alone a witness and a victim so that when the crime occurred, the state also should also provide protection and handling of witnesses and victims of these crimes.

The conditions over into some of the things that cause the enactment of the Witness and Victim Protection Act through Act No. 13 of 2006 on Protection of Witnesses and Victims August 11, 2006, including in this case the formation of a protection agency called the Institute for the Protection of Witnesses and Victims Protection Agency or abbreviated.

Basically the protection of witnesses and victims regulated in several laws for example Act No. 31 Year 1999 jo Law No. 20 of 2001 on the Eradication of Corruption, Law No. 15 2002 about Money Laundering, Government Regulation No. 57 of 2003 on Special Protection For

Rapporteurs and Money Laundering, Government Regulation No. 2 of 2002 on Procedures for the Protection of Victims and Witnesses in the Gross Human Rights Violations, Law No. 30 of 2002 on Corruption Eradication Commission Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 23 of 2002 on Child Protection, Law No. 5 of 1997 on Psychotropic Substances, Law No. 22 Year 1997 on Narcotics, Law No. 36 of 1999 on Telecommunications, Law No. 26 Year 2000 on Human Rights Courts, Law No. 29 of 2004 on Medical Practices. Overall this Act provide arrangements regarding the protection of witnesses and victims though still very modest. Such regulations have not provided the specific institutional arrangements also provide legal protection to witnesses and victims.

Witness and Victim Protection Agency established under Law No. 13 of 2006 on Witness and Victim Protection, has a very important role in the context of law enforcement and the handling of human rights violations. The development of the current criminal justice system, not only oriented to the perpetrators, but also oriented to the interests of witnesses and victims. Therefore, institutional Agency should be developed and strengthened in order to carry out the duties, functions and authority can be synergistic with the duties, functions and authority of law enforcement agencies who are in the criminal justice system.

The existence of the Witness and Victim is very decisive in the disclosure of a criminal offense in the criminal justice process. Therefore, against the Witnesses and Victims are given protection at all stages of the criminal justice process. The provisions concerning the legal subjects that are protected under this Act was expanded in tune with the legal developments in society. Beside witness and victim, there are others who also have a major contribution to uncovering certain criminal act, the witness Performers (justice collaborator), Rapporteur (whistle-blower), and experts, including the person who can provide information related to a criminal case although he heard him, he did not see himself, and not his own experience, all statements that person relating to a crime, so to they need to be given protection. Specific criminal acts mentioned above namely the crime of human rights violations are severe, corruption, money laundering, terrorism, human trafficking crime, narcotic crime, the crime of psychotropic drugs, the crime of child sexual, and follow Another crime which resulted in the position of witnesses and / or victims are faced with a situation which is extremely harmful to the soul.

Siti Maharani Sophie, a spokesman for the Agency in an interview dated October 16, 2014 pointed out that although the Agency has been established but still needs to strengthen its presence as in Law No. 13 In 2006, the Agency has the authority was minimal. Duties and responsibilities of the Agency to protect witnesses and victims is not a job that is easy and simple, just a hazard prone. But on the other hand, because these tasks are related to the public service, the Agency's performance also often become the public spotlight and rarely questioned the success and effectiveness in order to reveal the crime.

Weaknesses in the legal regulation of Law No. 13 In 2006, among others:

a). institutions are not sufficient to support the tasks and functions of the Agency in providing protection to witnesses and victims;

b) lack of authority regarding the substance of the elaboration of the duties and functions of the Agency which has implications for the quality of service delivery Protection of Witnesses, Victims, Perpetrators Witnesses, Rapporteur, and experts;

c) inter-agency coordination in the implementation of the provision of compensation and restitution; and

d) The protection of children in conflict with the law.

The fourth reason above and then behind the change of Law No. 13 of 2006 which was passed on September 24, 2014 by Law No. 31 Year 2014 on the Amendment of Law No. 13 of 2006 on Witness and Victim Protection. Such changes include changes to Law No. 13 of 2006 on Witness and Victim Protection, which regulates, among others, through changes in the chapter on institutional strengthening of the Agency, among others, to increase the secretariat into a general secretariat and the establishment of an advisory council, strengthening the authority of the Agency, the expansion of the subject of protection , the expansion of protection of victim services, increased cooperation and coordination between institutions, the awards and the special treatment given to the witness Actors, Member Agency inter temporal substitution mechanism, changes in criminal provisions, including criminal acts committed by the corporation.

Changes in the law can not be separated from efforts to achieve justice both formal and material for the purpose of the establishment of the Witness and Victim Protection Agency can be achieved. Strengthening Institutions Witness and Victim Protection in this case contains the essence of which is closely related to efforts to bring about justice and this is done by strengthening this institution formally through the establishment secretary general, advisory board, setting coordination between the Agency with other agencies, the regulation concerning the

establishment of the Agency in area as well as arrangements with regard to membership of the Agency. This strengthening is an effort that can not be separated from the formal nature of the Agency as an institution that has an organizational structure in which each position within the structure given their authority to carry out the duties and functions of the Agency in order to achieve justice in the protection of witnesses and victims. Additionally materially change the Act No. 13 of 2006 has also been conducted on the substance of the law relating to the assistance of witnesses and victims in the trial, whistleblower protection, protection for suspects who collaborate, protection for expert witnesses, arrangements regarding assistance to victims and arrangements for restitution and compensation. These settings become the legal basis for the Agency in carrying out its duties and functions. This description indicates that the existence of the Agency in the nature of formal as an institute that provides protection to witnesses and victims who have been getting a position that is not aligned with the suspects / victims and the nature of material is as implementing provisions on the protection of witnesses and victims in which both is expected to lead to the protection of the rights of witnesses and victims in the criminal justice process.

D. CLOSING

1. Conclusion

Essence the establishment of the Witness and Victim Protection Agency, there are two formal essence and essence the material. Formally Agency was established as an institution that has legal protection, organization, goals, and ways of working to provide legal protection to witnesses and victims, while materially essence the formation of the Agency is as an attempt to achieve justice for the victims and witnesses both procedural fairness and the substantive justice.

2. **Suggestions**

Strengthening the Agency should be conducted on two things namely the structure and the substance of the legal protection of witnesses and victims to be carried out by the Agency.

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