

# Protection against Witnesses in Criminal Justice Proceedings in Indonesia Based on the Humanitarian Value

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In the process of solving the criminal position of witnesses occupying the central locations in exposing a case, but the protection of witnesses in Indonesia has not been adequately arranged. This inquiry aims to analyse the protection of witnesses in the criminal justice process in Indonesia and to analyse the elements that become an obstacle in the carrying out of the protection of informants in the criminal justice process. The method used in this study is a juridical approach. Normative, with the secondary data source, is done by digging the literature data in the form of law, books, journals, and proceedings of various seminars, encyclopaedias, and legal dictionaries. The Data is obtained later in the analysis with the Descriptive quality method. The results of the study that the protection of witnesses in the criminal justice process in Indonesia have been regulated in the Law. 8 years 1981 about the Criminal Procedure Law (KUHAP) that witnesses of the translator (section 177), the right to give information without pressure (section 117), the right to not be asked questions that ensnare (section 166), the right to obtain reimbursement (article 229). Also, this arrangement is then strengthened by article 5 of Law No. 13 years 2006 on witness protection, and victims of the witness protection factor in Indonesia are hereditary factors, law enforcement, facilities and infrastructures, and factors Community.

**Key words:** *Protection, witnesses, criminal justice process, Indonesia.*



## **Introduction**

The national destination of Indonesia that is listed in paragraph IV of the orifice of the Constitution 1945, among others, protects the nation of Indonesia and all the spilled Indonesia to realise a fair and prosperous Indonesian society based on Pancasila. The reform movement of 1998 pioneered by students has resulted in a new phenomenon in national and state life, namely the demands of total reforms in all aspects of life, including the political, social, economic, and legal areas. According to A. Muis, that in the era of reform must be given meaning as the actualisation of the nature of the proclamation of independence of this nation that failed to implement the new Order, the freedom of different opinions, sovereignty of the people, appreciation to the Human rights and the recognition of civil society (Nersessian, 2018).

The failure of the new order in carrying out its objectives is to enforce the Constitution of the Republic of Indonesia 1945 and Pancasila purely and, consequently, has brought great catastrophe to the nation of Indonesia. For over 30 years, the rights of the community were established. One of the rights of a city that has been listed is the rights of witnesses in the criminal justice process. Human rights issues are an international issue and a very prominent discussion material in the current decade, and this requires earnest attention because the proportion of its influence in international and national life is tremendous.

The new era of globalisation shows that advances in communication and transportation technology demand multiple countries to assess the problem intensively. The information entering the country is not only through internal interaction, but without being prevented and will continue to occur interactions, interconnections and interdependencies (interfaces) between nations, both bilateral and multilateral. The state of Indonesia, as a legal state also needs to understand the situation of the world that has begun to pay attention to human rights so that in the era of reform, a big agenda demands the change of a living ordinance in the nation and the State. One of the notable changes in the protection of the rights of citizens relating to human rights itself (Erdman & Cook, 2019).

In human rights protection there has been a lot of security that has been clearly and firmly regulated in a statutory regulation. This is as it has been governed in the Child Protection Act, the Protection of women, the violence in the home Ladders and so forth the next new witness protection then almost forgotten in the reform agenda, and this proves that there is a discrimination in the protection of the law. This is even when looking at the process of the birth of the Witness Protection Act itself that was delayed for five years (Martin & Gurbai, 2019).

It should be understood together that one of the legitimate evidences of criminal justice proceedings is the witness or victim who hears, sees, or experiences the occurrence of a criminal offense in an attempt to seek and discover clarity about the Criminal acts committed by perpetrators of criminal acts. Law enforcement in finding and finding clarity about criminal acts committed by criminal acts often has difficulty in being unable to present witnesses or victims due to threats, whether physical or psychic of a party Certain. In connection with this, protection is required for witnesses or victims who are very important in their existence in the criminal justice process. The purpose of this study is to analyse the protection of witnesses in the criminal justice process in Indonesia and analyse the factors that are the obstacles in implementing the protection of witnesses in the criminal justice process in Indonesia (Wahyuningsih, Adi, & Iksan, 2018).

### **Research Methods**

The method used in this study is a normative juridical approach, with a secondary data source. Data was obtained by undertaking literature review, which means secondary data includes:

1. Primary legal material, which is a binding licensed material it consists of the basic norms of Pancasila Constitution 1945, MPR provisions, statutory regulations, jurisprudence, and others.
2. Secondary legal material, which is a close legal with the primary legal material and can be helped analyse and understand legal materials. For example, the draft concept of National Criminal Code, the research results of related experts, the work of the legal experts (relevant books), the results of scientific meetings (seminars, symposiums, discussions), and others.
3. Tertiary legal materials that will provide information/explanation instructions to primary and secondary legal materials, such as legal dictionaries, indices and others.

The data obtained is then analysed by the analytical method of analysis.

### **Discussion**

#### ***Witness Protection in the Criminal Justice Process in Indonesia***

The position of witnesses in the criminal justice process occupies a key position as stipulated in article 184 of the LAW. 8 years 1981 about the code of criminal proceedings. As the primary evidence, of course, the impact is very evident when a witness is not obtained. The importance of witness position in criminal justice proceedings has begun from the beginning of the criminal justice process. It should be acknowledged that the case of violation of the law is primarily based on information from the community. Similarly, in the next process, at the end of the prosecutor's Court, the witness as the primary evidence to be the reference of the

judge in breaking the guilt or absence of the defendant. Witnesses have a massive contribution in the effort to enforce the law and justice (Koegl, Farrington, & Raine, 2018).

In connection with this, witnesses are one of the crucial factors in proving or fact disclosure that will be used as a reference in finding other evidence to strengthen an investigation, investigation, and even evidence in Court. The importance of the witness role in the law enforcement process, especially the criminal law, certainly carries its consequences for the people being witnesses, whether it is a victim-witness and a reporter's witness or other witnesses in a criminal offense proving (Rahmat, Prasetyo, & Wahyuningsih, 2018).

The Code of Criminal Procedure Law (*KUHAP*) has set about the rights of witnesses to the right of the Interpreter (section 177), the right to provide information without pressure (section 117), the right not to be asked questions that ensnare (Section 166), the right to obtain reimbursement of Fees (Section 229). This arrangement was subsequently strengthened by article 5 of the Law No. 13 of 2006 on witnesses and Victim protection, governing that a witness and victim are entitled to:

- a. Obtain protection for personal, family, and property security, and is free from threats relating to the testimony that will be, or has been given;
- b. Participating in the process of selecting and determining the form of security protection and support;
- c. Provide information without pressure;
- d. Received translator;
- e. Free from the questions that ensnare;
- f. Obtaining information about the development of cases;
- g. Obtain information about a court ruling;
- h. Knowing in the case of convicted liberated;
- i. Got a new identity;
- j. To acquire a new residence;
- k. Obtain reimbursement of transportation costs, according to the needs;
- l. Get legal advice;
- m. Or obtain a temporary cost of living assistance until the deadline of protection expires.

Furthermore, Article 6 of Law No. 13 2006 on the Protection of Witnesses and Victims states that victims in gross violations of human rights, other than entitled to the rights referred to in article 5 of Law No. 13 years 2006 the protection of witnesses and victims also reserve the right to obtain medical assistance and rehabilitation assistance Psycho-Social. Witness protection at every stage of criminal event law (Wahyuningsih, 2016).

### **a) After the Event**

The victim witness is one of the keys to the success of a crime disclosure. Therefore, notwithstanding the definition of the criminal code or Law No. 13 of 2006, witnesses must be protected in the interest of the search for justice. At the end of the crime, the condition of the victim is generally very physically injured, with an unstable emotional condition accompanied by trauma. As part of the members of the wider community, witnesses are also prevalent possibilities with law enforcement so do not know where to report. Especially the witnesses who were victims, because of their security, felt concern for the response of law enforcement officers or society.

At this stage, witnesses need a sense of security that can be a temporary place away from the location and perpetrators. Witnesses need physical, psychological, and sociological recovery. Physical recovery can be a medical aid for bodily injuries, while mental restoration and sociological witnesses require counsellor mentoring and the belief that the public will not remove it. The role of the country in this stage is to ensure the safety of witnesses and companions. The part includes building support in the form of assistance of legal, medical, and gender-sensitive counselling at an affordable price (Watkins & Melde, 2018).

The community is directly responsible for delivering witnesses to the Medical Service centre if the witnesses suffer physical injuries. Also, the community plays a role in encouraging related community service institutions to provide mentoring. These associated institutions can be legal aid institutions as well as non-governmental organisations. Regarding the security of witnesses, the public can play a role to secure witnesses or victims from the location of events and perpetrators and directly report the incident to the victim's family and security personnel. In support of the criminal disclosure process, the community also plays a role in securing objects that become evident, while recording historical events. After the event of a crime, when entering the criminal justice system, witnesses are entitled to know his rights, entitled to obtain service according to his needs as a witness, entitled to a mentoring, and authorised to receive Protection from physical and psychological threats as a result of his willingness to testify. At this level, witnesses have been able to apply for protection of the witness and victim protection agencies, both on their initiative and at the request of authorised officers. The importance of caring for the protection of witnesses with the human values listed in Pancasila, namely "the fair and civilized humanity" (Sitorus, 2016).

KirdiDipoyono states that with the fair and civilised humanity being incorporated in the opening of the Constitution 1945, implicitly, the human rights of all people become guarantees of the law. The legislature makes the law to align with the moral ideals and the ideals of the nation's law, and the judicial body prosecutes matters according to fair and civilised law. According to Muladi to conduct legal protection in criminal justice proceedings must be based on the principle of "humane," which is sourced to the fair and civilised

humanitarian items as already formulated in TAP MPR. No. II/MPR/1978, so that all underlying matters within the criminal law must be oriented at the expressed and implied values of the items. The details of the particulars of Pancasila are as follows:

- (1) To acknowledge and treat man according to his dignity and dignity as being God Almighty.
- (2) Acknowledge equal equality, equality of human rights and obligations, without discriminate tribes, descendants, religions, beliefs, gender, social standing, skin tone, etc.
- (3) Develop the mutual love of fellow human beings.
- (4) Develop an arbitrary attitude towards others.
- (5) Uphold humanitarian values.
- (6) Keen on philanthropic activities.
- (7) Dare to defend righteousness and justice.
- (8) The Indonesian nation felt like part of all humankind.
- (9) Develop a respectful attitude and cooperate with other countries.

From the grains of Pancasila, is very clear that the Indonesian nation's approach with humanitarian values should be reflected in every step of the national development policy, including the system of criminal law enforcement. Notonagoro states that our country is monodualistic as follows: "Speaking of Pancasila, we ought to be seated as a fellow citizen. Our Mother Earth brothers and sisters Indonesia. The natural position and the similarities of our nature. We are born as a son of an ancestor, and we have the unity of birth and place of residence. Our country is because of its nature, absolute monodualistic humanity, not a liberal state, not a state of sheer power and dictator, not a materialist state(Martoredjo, 2016).

Our country is a country consisting of individuals who jointly live both in the birth and in the Informant, who have both needs and everyday interests, both of which are held to not interfere with each other, but in Cooperation. Our country is the so-called cultural law country. The philosophy of balance in which the need for the protection of individuals and communities must be a guideline in the life of the nation and state included in the criminal law enforcement process that must place witnesses as human beings who need to be protected because of the dignity and the dignity of the values of humanity as an individual creatures of God.

#### **b) Prejudicial Level (Investigation and Prosecution)**

At the level of the inquiry, witnesses also face various problems. As a situation that is a continuation of the end of the crime event, the level of investigation has begun to arise issues related to the study conducted by law enforcement. The event was entered at the beginning of the criminal justice system. At this level, witnesses began to feel afraid of terror and intimidation. However, the fear of terror and bullying was not only terror and intimidation



against him but also to his closest people. This fear arises regardless of whether the witness decides to testify or not. When witnesses realised that the perpetrators would be promoted by law enforcement, the witnesses felt the vulnerability of themselves and his family. Witnesses realised that his testimony could ensnare the wrongdoers so that witnesses feared that the perpetrators would not let them testify (Isra, Yuliandri, Amsari, & Tegnan, 2017).

Especially for sexual violence, particularly witnesses who are also victims of sexual abuse have concerns that they will receive stigmatisation of the community, although the public does not necessarily know that they are a witness. Another interest, suffered by the witness as well as the victim, especially in the case of sexual violence and trafficking, is a concern if the investigator is a man. Witnesses have a significant level of embarrassment in the face of questions asked by male investigators. At this level of investigation, witnesses require security assurance from intimidation or terror. Intimidation and terror are not necessarily the case, but in the event of terror or bullying, it can reduce the quality of victims' testimonies. In connection with the investigation process, witnesses require an investigative process that does not corner. Therefore, it is necessary for a companion to be present. Witnesses also need a method of investigation that is not protected. At this stage of the inquiry, witnesses have the right to obtain intact information about its powers following the mandate of Law No. 13 of 2006 on witness and victim protection.

Also, witnesses are entitled to consider their opinions and needs in the processes in the follow-up cases. Witnesses are also allowed to a sustaining while testifying, and there is also an event process that is specific to the testimony-giving as needed. At this stage of an investigation, as required, witnesses are entitled to a secure home for a specified period. Related to terror and intimidating, witnesses can apply to the police to immediately provide personal safety protections when witnesses are in a security condition that is very dangerous to them. At this level of investigation, the country plays a role in ensuring safety by establishing a security and protection mechanism. Security assurance and protection, among others, requires the safety authorities to maintain the confidentiality of the reporting identity. Of course, is equipped with a sanction's mechanism. Besides, the country must ensure the process of investigation is gender-sensitive. Act No. 13 of 2006 on witness and victim protection, the witnesses have to obtain protection for their personal, family, and property security, and are free from threats that pertain to testimonies that will, moderate, or given. Furthermore, witnesses are entitled to obtain assistance in the cost of transportation according to the needs, receiving the cost of temporary living costs until the deadline of protection, and the right to participate in the process of selecting and determining the form of protection and security support (Wismayanti, O'Leary, Tilbury, & Tjoe, 2019).

In general, the needs of witnesses at the pre-justice level remains the same, which is the need for security from intimidation or terror. However, at the pretrial level, there is another



essential that is the need for information. The information in this particular matter is information about the system and the proceedings. Witnesses certainly have different levels of understanding regarding the criminal justice system. Therefore, witnesses need to be notified of the stages of the criminal justice process that will be completed. In addition to information about the system and the proceedings, witnesses also need information about the impacts that may occur from the implementation of the processes, such as callings, court conditions, and especially that the witnesses will be requested a return description for the same information. At the pretrial level, the case had begun to run, and there can be various developments. Witnesses need information about the event of the claim. The country plays a role in guaranteeing witness rights. One of them is to ensure a witness, victim, or a companion to access legal documents (such as a copy of the event news). The pre-justice level is also a stage to restore the physical and mental state before the witness bears testimony at the court stage. The return of this material and mental state is to prevent traumatising by methods and ways of treatment and questions that are not tendentious, forcing, and fishing. On the examination of the confrontation, witnesses should not be physically or mentally influenced. To support testimony, witnesses can provide information directly without face-to-face (Mcneeley, Meldrum, & Hoskin, 2018).

### **c) Court Level**

At the court level, the provisions of Article 1, Figure 26 of the Law No. 8 of 1981 on criminal events law says: "The witness is one of the evidence in a criminal case that is a description of the witness of a The illegal activity he heard him, he saw himself and experienced himself". For this reason, witnesses in the court proceedings receive a very strict escort in the operations of the trial because of the chance of the witness being grafted a criminal act or harmed. It is possible to delay the trial in some instances. This occurs more so if the case is significant, such as corruption, money laundering, and other criminal acts. According to Remington and Ohio, as quoted by RomliAtmasasmita, the "Criminal Justice System" can be interpreted as using the system approach to the mechanisms of administration of criminal justice and criminal justice as a system is the result of interactions between statutory regulations, administrative practices, and social attitudes or behaviours. The sense of the system itself implies the implications of an interactive process that is rationally prepared and in an efficient way to deliver specific results with all its limitations (Wahyuningsih & Sholeh, 2017).

Hagan distinguishes the notion of the "Criminal Justice System" and "Criminal Justice Process." The Criminal Justice System is the interconnection between the decisions of every institution involved in the criminal justice process. The Criminal Justice Process in each stage of a ruling that confronts a suspect into the process that leads him to an illegal determination. MardjonoReksodipoetro, giving the opinion referred to as the "criminal justice system," is a crime control system consisting of police agencies, prosecutors, courts, and convicted



correctional. On another occasion, Mardjono Reksodipoetro said that the "Criminal Justice System" is a system in society to tackle the problem of evil. Tackling evil is interpreted as controlling crime within the boundaries of tolerance. According to Mardjono Reksodipoetro, the purpose of the "criminal justice system" is:

- 1) Preventing people from becoming victims of crime;
- 2) Resolve crime cases that occur so that the public is satisfied that justice has been enforced and the guilty is sentenced; and
- 3) To strive so that those who have committed evil do not repeat their crimes.

Starting from the goal of the above criminal justice system, Mardjono Reksodipoetro suggests that the four components in the criminal justice system ranging from the police, prosecutors, courts, and correctional institutions, are expected to cooperate and can be from an "Integrated criminal justice system." When the alignment in the system work is not done, there is expected to be three losses as follows:

- 1) Difficulty in assessing the success or failure of each of the agencies, in connection with their duties together.
- 2) Challenges in solving the subject matter of each institution as a subsystem of the criminal justice system.
- 3) Because the responsibilities of each institution are often less clearly divided, resulting in every ministry not paying attention to the overall effectiveness of the criminal justice system.

According to Muladi, the "criminal justice system" should be seen as "The network of courts and tribunals which deal with criminal law and its enforcement." The criminal justice system in it contains systemic motion of subsystems of supporting subsystems is the police, prosecutors, courts and corrections/correctional institutions, which as a whole is a unity that seeks Inputs into outputs ("outputs") which are the objectives of the criminal justice system consisting of:

- 1) Short-term objectives of the resocialisation of unlawful acts;
- 2) Medium-term purposes of crime prevention;
- 3) Long-term goals of social welfare.

As mentioned above that the criminal justice system has a purpose: short-term is the rehabilitation of perpetrators of criminal acts, the medium term is preventing crime, and long-time is the welfare of society, but in reality produces the reverse as stated by humans, as follows: "The criminal justice system, then, is a system which differs from most another social system because it produces "un-welfare" on a large scale. Its immediate output may be:



imprisoned, stigmatisation, dispossession and in many countries even today death and torture", and this means that the criminal justice system is a system that differs from most other social networks, as it generates a large scale of injustice, the closest results, perhaps: pipetting, stigmatisation, revocation of rights, and in many countries to date death and torture. Thus, the criminal justice system produces unpleasant things. Even Johannes Andenaes describing the criminal justice system as a game of morality, is also a degradation ceremony (Pyo, 2018).

Integrated criminal justice system talks cannot be separated from the systematic approach. Integrated frills criminal justice system, according to Muladi, is very excessive (overburden), because no system is not integrated or integrated. International attention to crime victims was seen with the holding of Congress as in Milan from 26 August to 6 September 1985, the United National Congress on the Prevention of Crime and the Treatment of Offenders to the VII with the theme "Crime prevention, for freedom, justice, peace, and development." One of the topics discussed deeply is the problem of crime victims. On that occasion, a draft declaration in which contained a recommendation so that the crime victims were given the right "to be present and to be heard at all critical stages of a judicial proceeding".

New Zealand has a 1963 rule that gives the foundation that the victim of violent crimes can be repaid: the "Criminal Injuries Compensation Act." In the state of Ontario for example, there is the "Ontario Criminal Injuries Compensation Scheme." In the Netherlands enacted "*Wet voorlopigeschandenfonsGeweld-Misdrijven*". These rules constitute a fund that pays a certain amount of money as a bidder to those victims of violent crimes committed intentionally or when the victim dies in their family. The Fund is a legal entity and becomes a burden on the Department of Justice spending budget. The Dutch Minister of Justice gave the reason why society as a whole has responsibility for victims of violent crimes. That duty is founded on three things: first, the burden is attributed to the circumstances that the ruler declares some certain deeds as a gross offense and an assault on heavy order of legal philosophy. As a continuation of the criminal threat to the acts, it as a task from the ruler to relieve or eliminate the effect of the deed (Lovell, Luminais, Flannery, Bell, & Kyker, 2018).

Secondly, more philosophies, society can be seen as a subtle network of human acts, so that everyone in a social sense is generally "guilty" of what the end incarnate as the fault of a person who Committing a criminal offense. In short, there is solidarity with people who fall victim to evil. Thirdly, an essential consideration for legal politics; The regulation is seen to have the influence to reconcile or resolve the conflict. If there is individual cultivation for victims of criminal acts, the social-psychological climate is useful to treat the maker using the social preventative corner. In the courts of the Asian countries, the giving of more witnesses in the point of respect and protection of witnesses and victims is crucial when dealing with corruption and tortured by police and other human rights violations. The people who are

offered protection by the police are usually worried because they wouldn't know whether the police were right or the bad that would protect them. In some instances, police officers are poorly regarded, and police activities may present threats from protection. In other countries, the absence of an effective Witness Protection Act has led to the loss of quality of investigation and the course of the proceeding. In Sri Lanka, some cases are known that witnesses were killed to stop them from testifying in the trial. In the Philippines, similar conditions also occur. Hoping that witnesses are present at the hearing to provide information under such circumstances is a rare thing (Maglione, 2017).

In Indonesia, the presence of witness and victim protection laws is very welcome for witnesses, given the many public complaints about the need and the importance of witness protection., it can be proven that since the inception of Law No. 13 of 2006 on the Protection of Witnesses and Victims on August 11, 2006. Until now it has not been able to answer the problem of society because it has not formed other legal components related to witness protection. Witness protection in criminal justice proceedings is a phenomenon of Indonesian illegal program law, where its enforcement will always be in contact with the law enforcement itself (Wismayanti et al., 2019).

### ***Factors That Become an Obstacle in Implementing the Protection of Witnesses in the Criminal Justice Process in Indonesia***

Soerjono Soekanto stated that the role of law enforcement officers in this matter is significant because without the part of law enforcement officers than the effectiveness in carrying out Law No. 13 years 2006 on witness Protection and the victim will not go well. According to Soerjono Soekanto, to the efficiency of law enforcement, it takes five essential elements:

#### **a) Legal Factors**

Practice in the field of law enforcement there are times when there is a conflict between legal certainty and justice, this is due to the conception of justice is a formulation of abstract, while the legal certainty is a procedure which has been determined negatively as a consequence of the validity of formal legal principles in the Criminal Code as the foundation of materiel in law enforcement. A policy or action that is not entirely legal-based is something that can be justified throughout the system or act is not contrary to the laws of the law. In discussing criminal law in all its aspects (the nature aspect against the law, offense and criminal,) will always attract attention, in connection with its unique nature and function, often said that the criminal law cuts its own flesh and has a double role, namely the primary as a means of rational crimes (as part of criminal politics) and secondary as a means of management of

control of social as implemented spontaneously or by the state with its equipment, as the law criminal contain the properties contradictory and paradoxical (Mcneeley et al., 2018).

When the criminal law is used as a means to overthrow the crimes of humanistic approach should be observed, this is important because the crime in its essence is not only a humanitarian problem but because the criminal it contains elements of suffering that can invade the importance or value of the most precious to human life. On the other hand, because law enforcement is a process of invasion between the value of real behaviour methods and patterns aimed at achieving peace. However, the Criminal Code as the Foundation of material in Indonesia is included in the civil law system, which emphasises the criminally structured law and focuses on legal certainty. With his views on the freedom of human will, the flow focuses on deeds and not to people who commit crimes. The formulation of legislation and acts against the law is a central point of concern for criminal law. Thus, the deed was interpreted abstracted and was seen in a juridical order regardless of the person who did it (Fouladvand, 2018).

In the exemplary flow of criminal, which is stipulated by the law, is not familiar with the system of warning or circumcision related to the age factor, the state of the perpetrator's soul, the crimes committed earlier as well as the particular circumstances of Crimes committed.

According to Sudarto, the classical flow rests on three pillars:

- a. Legality principle, which states that no crime without law, no criminal offense without law and no prosecution without law.
- b. The principle of error, which contains that the person can only be convicted for the criminal act intentionally or due to misconduct;
- c. The secular (retaliatory) principle of remuneration, which holds that the criminal in concrete is not inflicted with the intention of achieving a fruitful result, instead of the weight of the human activity.

b) Law Enforcement Factors

The mentality or personality of law enforcement officers plays a vital role in the proper functioning of the law if the rules are ethical, but the quality of the officer is not right, then there will be problems. Therefore, one of the critical successes in law enforcement is the mentality or personality of law enforcement. So far, there is a strong tendency among the public to interpret the law as an officer or law enforcement(Wolfe, Manjarrez, & Rojek, 2018).

c) Factors by means or supporting facilities

Contributing factors or supporting facilities include software and hardware. One example of software is the quality of law enforcement is seen from the level of education, expertise that

is owned such as skills with adequate certification. The development of science and technology is always followed by criminal vows. Therefore, law enforcement must be able to conform to the progress of the crime pattern. Some law enforcement officers like police members as investigators there is still high school educated, so have not gained any knowledge on how the criminal justice process. As for law enforcement scholars who are well trained, there is also a weakness because the curriculum in the education of law scholars currently aims to understand the positive law only so that sometimes the police have a barrier in the implementation (Adjorlolo & Chan, 2019).

While the hardware, in this case, is a physical means that serves as a contributing factor in the criminal settlement process, the facilities and infrastructures are still limited such as the lack of: budget, places used to protect witnesses and tools to support the work of the apparatus in conducting witness protection.

#### d) Community Factors

The general purpose of the law is to regulate the people's life to create an orderly, peaceful, fair and prosperous society. According to Prof. Satjipto, Raharjo Progressive Law is a law that can conform to the development of society because the law should originate and derive from the values that live and thrive in the culture. The measure of the legal order level in the community will be reflected by the level of compliance and legal awareness of society. In Indonesia, public awareness to obey the law can be said to be low, especially in community involvement in the process of solving criminal matters. Indonesian society is still reluctant to report if, in its environment, there is a criminal case. They are unwilling to deal with law enforcement officers and serve as witnesses. Because there is a concern for the community when reporting a criminal case will instead be suspect, or by being a witness means that it will be requested in the process of investigation and criminal justice that takes a long time and expensive costs, so that people sometimes avoid getting involved in a criminal procedure. Because they could lose income because they could not work when they witnessed the level of investigation and trial and still have to finance for transportation costs (Ronco, 2018).

### **Conclusion**

1. Protection of witnesses in the criminal justice process in Indonesia is conducted from the investigation, prosecution and the court, as set forth in the law. 8 years 1981 about the Code of Criminal Procedure Law (KUHAP) among them is the right to the translator (section 177), the right to provide information without pressure (section 117), the right to not be asked questions that ensnare (section 166), the right to for reimbursement (Section 229). This arrangement was subsequently strengthened by article 5 of Law No. 13 of 2006 on witness and victim protection.



2. The obstacle in protection against the witness of the criminal justice process is the legal factor due to the conflict between the principle of legal certainty as a consequence of the validity of formal legal principles and fairness, educated law enforcement factors Low so as to understand the legal protection philosophy of witnesses and factors of facilities and supporting facility and a consideration of society that is less conscious to want to be a witness in criminal matters.

### **Recommendations**

1. Terms as law enforcement in the acceptance of employees need to be upgraded to a minimum of scholars to better understand the duties and responsibilities as law enforcement.
2. It is necessary to increase the budget to carry out legal counselling for the community and to provide adequate facilities and infrastructures as support for the implementation of protection against witnesses.



## REFERENCE

- Adjorlolo, S., & Chan, H. C. (Oliver). (2019). Risk assessment of criminal offenders in Ghana: An investigation of the discriminant validity of the HCR-20V3. *International Journal of Law and Psychiatry*, 66(June), 101458. <https://doi.org/10.1016/j.ijlp.2019.101458>
- Erdman, J. N., & Cook, R. J. (2019). Decriminalization of abortion – A human rights imperative. *Best Practice and Research: Clinical Obstetrics and Gynaecology*, (xxxx). <https://doi.org/10.1016/j.bpobgyn.2019.05.004>
- Fouladvand, S. (2018). International Journal of Law , Crime and Justice Decentering the prosecution-oriented approach: Tackling both supply and demand in the struggle against human trafficking. *International Journal of Law Crime and Justice.*, 52(May 2017), 129–143. <https://doi.org/10.1016/j.ijlcj.2017.11.001>
- Isra, S., Yuliandri, Amsari, F., & Tegnan, H. (2017). Obstruction of justice in the effort to eradicate corruption in Indonesia. *International Journal of Law, Crime and Justice*, 51, 72–83. <https://doi.org/10.1016/j.ijlcj.2017.07.001>
- Koegl, C. J., Farrington, D. P., & Raine, A. (2018). The relationship between low resting heart rate , systolic blood pressure and antisocial behavior in incarcerated males ☆. *Journal of Criminal Justice*, 55(January), 88–95. <https://doi.org/10.1016/j.jcrimjus.2018.02.004>
- Lovell, R., Luminais, M., Flannery, D. J., Bell, R., & Kyker, B. (2018). Describing the process and quantifying the outcomes of the Cuyahoga County sexual assault kit initiative. *Journal of Criminal Justice*, 57(May), 106–115. <https://doi.org/10.1016/j.jcrimjus.2018.05.012>
- Maglione, G. (2017). International Journal of Law , Crime and Justice Imaging victims , offenders and communities . An investigation into the representations of the crime stakeholders within restorative justice and their cultural context. *International Journal of Law, Crime and Justice*, 50, 22–33. <https://doi.org/10.1016/j.ijlcj.2017.02.004>
- Martin, W., & Gurbai, S. (2019). Surveying the Geneva impasse: Coercive care and human rights. *International Journal of Law and Psychiatry*, 64(March), 117–128. <https://doi.org/10.1016/j.ijlp.2019.03.001>
- Martoredjo, N. T. (2016). Building Character Through Pancasila Values to Sovereign Nation. *Humaniora*, 7(1), 116. <https://doi.org/10.21512/humaniora.v7i1.3494>





- Mcneeley, S., Meldrum, R. C., & Hoskin, A. W. (2018). Low self-control and the adoption of street code values among young adults. *Journal of Criminal Justice*, 56(July 2017), 118–126. <https://doi.org/10.1016/j.jcrimjus.2017.07.004>
- Nersessian, D. (2018). The law and ethics of big data analytics: A new role for international human rights in the search for global standards. *Business Horizons*, 61(6), 845–854. <https://doi.org/10.1016/j.bushor.2018.07.006>
- Pyo, J. (2018). International Journal of Law , Crime and Justice The impact of jury experience on perception of the criminal prosecution system. *International Journal of Law Crime and Justice.*, 52(April 2017), 176–184. <https://doi.org/10.1016/j.ijlcj.2017.11.006>
- Rahmat, D., Prasetyo, T., & Wahyuningsih, S. E. (2018). Reconstruction of Advocate Policy in Assisting Child Cases Based on Value of Justice (A Study in Kuningan District). *UNIFIKASI : Jurnal Ilmu Hukum*, 5(2), 85. <https://doi.org/10.25134/unifikasi.v5i2.1222>
- Ronco, A. Di. (2018). International Journal of Law , Crime and Justice Disorderly or simply ugly ? Representations of the local regulation of street prostitution in the Italian press and their policy implications. *International Journal of Law, Crime and Justice*, 52, 10–22. <https://doi.org/10.1016/j.ijlcj.2017.09.004>
- Sitorus, J. H. E. (2016). Pancasila-based Social Responsibility Accounting. *Procedia - Social and Behavioral Sciences*, 219, 700–709. <https://doi.org/10.1016/j.sbspro.2016.05.054>
- Wahyuningsih, S. E. (2016). Perlindungan Hukum terhadap Anak Sebagai Korban Tindak Pidana Kesusilaan Dalam Hukum Pidana Positif Saat Ini, *III*(2), 172–180.
- Wahyuningsih, S. E., Adi, N., & Iksan, M. (2018). The role of scientific testimony in the process of investigation of crime in Indonesia, 97–103.
- Wahyuningsih, S. E., & Sholeh, M. (2017). Judge ' s Considerations Analysis toward Perpetrators of Criminal Acts of Sexual Violence to Underage Children in Demak District Court Reviewed with Law Number 35 Year 2014 about Children Protection, *IV*(35), 346–352.
- Watkins, A. M., & Melde, C. (2018). Gangs , gender , and involvement in crime , victimization , and exposure to violence. *Journal of Criminal Justice*, 57(January), 11–25. <https://doi.org/10.1016/j.jcrimjus.2018.02.005>
- Wismayanti, Y. F., O'Leary, P., Tilbury, C., & Tjoe, Y. (2019). Child sexual abuse in Indonesia: A systematic review of literature, law and policy. *Child Abuse and Neglect*, 95(June), 104034. <https://doi.org/10.1016/j.chiabu.2019.104034>



Wolfe, S. E., Manjarrez, V. M., & Rojek, A. (2018). Why does organizational justice matter? Uncertainty management among law enforcement officers ☆, *54*(December 2017), 20–29. <https://doi.org/10.1016/j.jcrimjus.2017.11.003>