

Implementation Of Article 5 Of Law 31 Of 2014 Concerning The Protection Of Witness And Victims In The State Court Of Banda Aceh

Leny Oktaviyanti

Fakultas Syariah Dan Hukum, Universitas Islam Negeri Ar-Raniry Darussalam

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ABSTRACT

Article 5 of Law Number 31 of 2014 concerning the protection of witnesses and victims regulates the rights of witnesses and victims and the author focuses more on the rights of witnesses in criminal acts of corruption, in matters of witness rights and will relate to the implementation of article 5 regarding whether or not witness protection is applied at the Banda Aceh District Court because the success of a criminal justice process depends on the evidence that has been successfully disclosed in court, especially witness testimony is an important factor so that witness protection is needed as regulated in the law. And one of the factors in the absence of application of witness protection is the difference in the testimony of witnesses of corruption in the BAP and in court. From the problems above, the problem is how to implement Article 5 of Law Number 31 of 2014 against witnesses of corruption crimes in the Banda Aceh District Court, and what are the factors causing the differences in the statements of witnesses of corruption in the BAP (Minutes of Investigation) and in court based on the judge's observations. The research method used is empirical juridical by conducting interviews, observations, and documentation. The results and conclusions of the study indicate that the protection of the rights of witnesses carried out by the Banda Aceh District Court has not been implemented as stated in Article 5 of Law Number 31 of 2014 due to many obstacles faced, starting from the authorized institution, namely the Witness Protection Agency and the Witness Protection Agency. victim (LPSK), budget or funds, and from the government. And there are differences in the statements of witnesses in the Minutes of Examination with those in Court based on research with the judge, namely there are three factors, the influence of the investigator, the influence of the defendant, and the fear of the witness.

Email :

Oktaviyanti12@gmail.com

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INTRODUCTION

Article 5 of Law Number 31 of 2014 regulates the rights of witnesses and victims but the author focuses more on the rights of witnesses [1], [2]. Where after the author conducted preliminary research in witnessing the trial of the corruption case of the road construction project in Aceh Tamiang which was tried at the Banda Aceh District Court, from the many witness rights regulated in the Act, the author saw a small part of the rights of witnesses in the crime case. the corruption crimes are fulfilled such as not asking entangling questions, getting an interpreter, and getting assistance from law enforcement officials such as the police and the prosecutor's office, it happens during the trial process but whether other rights have been fulfilled properly or not[3].

In the trial, the author also saw that there were several cases where the testimony of witnesses at trial differed from the statements given in the BAP (Minutes of Investigation), when the questions asked by the public prosecutor contained these differences so that the public

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prosecutor repeatedly reprimanded or reminded the witness against difference in the description. As contained in Article 163 of the Criminal Procedure Code: If the testimony of a witness at trial is different from the information contained in the official report, the judge at the hearing shall remind the witness about this matter and ask for information regarding the differences that exist and are recorded in the official report. trial examination[1].

With regard to this, the public prosecutor with the starting point of the provisions of article 163 of the Criminal Procedure Code will take a procedure to remind the difference, the public prosecutor usually procedurally then provides an explanation of the importance of a witness to give honest testimony which will be able to assist the court in realizing the material truth, building a conducive atmosphere so that witnesses can give information freely, without influence and pressure because it is suspected that the witness had previously received threats or pressure from interested parties (the defendant) so that the witness did not feel free to give his testimony, and the weakness of the protection of witnesses which is already contained in Law Number 31 of 2014 concerning the second amendment to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims so that witnesses do not feel free in the statements they give, no questions are asked that are trapping and questioning is carried out in a clear language that is easily understood by the witness and finally the witness is warned about the oath that has been taken to provide true information and is nothing but the truth. no entangling questions were asked and the questions were made in a clear and easily understood language by the witness and finally the witness was warned about the oath that had been taken to give true information and nothing but the truth. no entangling questions were asked and the questions were made in a clear and easily understood language by the witness and finally the witness was warned about the oath that had been taken to give true information and nothing but the truth. [4], [5]. However, if the warning is not heeded by the witness and the witness remains in his testimony at the trial, the presiding judge asks for information on the difference in the information and then it is recorded in the minutes of the trial. contained in Article 5 of Law 31 of 2014 so that witnesses can give testimony as freely as possible without any influence or pressure, and this difference in witness testimony can affect the judge's decision later. [2], [6].

The problem of witness testimony as described in Article 185 of the Criminal Procedure Code: Witness testimony as evidence is what the witness stated in court. In this article, it is emphasized that witness statements in court are stated as evidence. If there is a difference in the statements in the trial and the BAP, it is at the trial that the testimony is taken for consideration by the judge. This is where the role of the judge as an active judge in seeking material truth is characteristic of judges in the state criminal justice system that adheres to civil law, when there is a difference in the statements given by witnesses, the judge must see whether the statements or reasons given by witnesses are logical and reasonable. can support the difference in the information [7], [8].

METHOD

Types of research

In this study, sociological legal research is used in data collection, sociological legal research which in other words is a type of empirical legal research and can also be called field research, namely examining applicable legal provisions and what is happening in reality in society.

Research Objects and Subjects

The object of research is research on the process to find a rule of law. The object of this research is related to Article 5 of Law Number 31 of 2014 concerning the Protection of Witnesses

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and Victims in the Banda Aceh District Court. Research subjects are referred to as informants, namely people who provide information about the data that the researcher wants related to the research being carried out. The subjects in this study are Judges and Registrars at the Banda Aceh District Court.

Data source

Data sources are anything that can provide information about data, based on the source, data can be divided into two, namely:

1. Primary data

Primary data is data obtained directly from the object to be studied (respondents). The primary data collection technique was carried out by field research, namely by looking directly at the trial process, interviews (interviews) and those related to the author's title in the Legal Area of the Banda Aceh District Court.

2. Secondary data

Secondary data is data obtained through library research, namely by reading and reviewing books, articles, journals, and internet data, then categorized according to the data used to complete this scientific work so that it gets valid results.

Data collection techniques

The data collection techniques used are observation, interviews and documentation. Observation is a data collection technique that is carried out through an observation accompanied by notes on the state or behavior of the target object. This research was conducted by direct observation of the research targets and locations, in order to obtain valid data. As a process of obtaining information for research purposes by means of question and answer while face to face between the interviewer and the person being interviewed. 9 By conducting interviews with informants originating from the research location so that later the data needed will be obtained as a source for processing and analysis. Documentation is looking for data about things or variables in the form of archives, books, magazines, documents,

RESULT AND DISCUSSION

Implementation of Article 5 of Law Number 31 of 2014 Against Witnesses for Criminal Acts of Corruption at the Banda Aceh District Court

Recognizing the importance of the existence of witnesses that will determine the success of the Witness and Victim Protection Agency (LPSK) in protecting witnesses is the support of law enforcement officers (Police, Attorney, Supreme Court, and Advocates). The close correlation between the performance of LPSK as an institution administering the rights of witnesses in criminal justice with the support of law enforcement officials demands a pattern of close relationships and is able to synergize. This seems to be realized by LPSK, as important as institutional development is to establish an ideal pattern of cooperative relationships with law enforcement officers [7].

Therefore, the cooperation between LPSK and several institutions has become a shared awareness of the importance of coordinating witness protection as part of the enforcement of the criminal justice system, but it is very important that based on a strong commitment, the synergy of witness protection on a national and international scale will have a positive impact. The Witness and Victim Protection Agency (LPSK) is not located in Banda Aceh, so the authorized law enforcement agencies and officials can implement and support matters relating to the

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implementation of the rights of witnesses and victims based on Article 5 of Law Number 2014 concerning amendments to the Law. Law Number 13 of 2006 concerning the protection of witnesses and victims at the Banda Aceh District Court, based on the results of research that [9]:

- a. 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. There has been no application related to this, the Banda Aceh District Court has not been able to provide guarantees because the authorized institution itself, namely the witness and victim institution (LPSK) does not guarantee protection from personal, family, and property security because there is no witness protection agency located in Banda Aceh so that the coverage in terms of protection has not been fully fulfilled.
- b. Participate in the process of selecting and determining the form of security protection and support. There has been no implementation regarding this matter, article 5 letter a has not been fulfilled and has not been implemented as stated in Law Number 31 of 2014 especially regarding article 5 letter b where witnesses can choose the form of protection that will be carried out but this is still far from being implemented in Indonesia. The Banda Aceh District Court is due to the fact that the witness and victim protection institutions have not been able to provide more coverage on how witnesses can determine what form of protection they want.
- c. Provide information without pressure. The Banda Aceh District Court has implemented this, which is based on article 117 paragraph (1) of the Criminal Procedure Code which states that witnesses have the right to give testimony without pressure from anyone or in any form, it is indeed obligatory for witnesses to give testimony freely and comfortably without fear in giving testimony. true information.
- d. Got a translator. Based on the research of the Banda Aceh District Court, it is very concerned that if the witness cannot speak Indonesian, the Banda Aceh District Court provides an interpreter to the witness to provide information without any misunderstanding due to language limitations and as stated in Article 177 paragraph (1) of the Criminal Procedure Code, it is stated that the witness has the right to an interpreter if the witness does not understand Indonesian. And in terms of getting an interpreter, sometimes the witness presented has limitations such as being mute or deaf, as well as an interpreter as stated in Article 178 paragraph (1) of the Criminal Procedure Code which states that the witness has the right to an interpreter if the witness is mute and/or deaf and cannot write.
- e. Free from entangled questions. In terms of being free from questions that ensnare law enforcement officers, both Public Prosecutors and Judges, it is strongly obligated not to ask questions that are difficult for witnesses to understand, questions that are not clear and entangle as contained in Article 166 of the Criminal Procedure Code states that witnesses have the right to no nagging questions were asked.
- f. Get information about the progress of the case. Regarding this matter, the Banda Aceh District Court provides information regarding the progress of the case if the witness asks to be informed of the progress of the case to which the witness gives testimony.
- g. Get information about court decisions. Likewise, information regarding the progress of the case of the District Court also provides information if the witness requests to be informed of the judge's decision in court on the case for which the witness testifies.
- h. Receive information in the event that the convict is released. Regarding the corruption case, the Banda Aceh District Court provided information to the witness that the convict had been released and that was at the request of the witness himself.

- i. His identity is kept secret. The Banda Aceh District Court for the corruption case has indeed kept the identity of the witness a secret in order to provide peace and comfort for the witness in giving testimony in court.
- j. Got a new identity. In terms of obtaining a new identity, the Banda Aceh District Court has not implemented this yet due to the many obstacles faced by the authorized institution, namely the Witness and Victim Protection Agency.
- k. Get a temporary residence. Regarding this, it is the same as in point j that there are separate obstacles for the Witness and Victim Protection Agency which are difficult to reach and insufficient funds to carry out this.
- l. Got a new home. Having only a temporary residence from the authorized party, namely the Witness and Victim Institution, does not guarantee this sense, especially with the new residence which really cannot be implemented within the scope of the Banda Aceh District Court.
- m. Obtain reimbursement of transportation costs as needed. Regarding the transportation costs given to witnesses, it cannot be applied at the Banda Aceh District Court because there are no adequate funds to guarantee the costs of witnesses to give testimony at court hearings, and that is the authority of the Public Prosecutor as the party presenting witnesses, if the Institute Witness and Victim protection cannot reach, the witness is given the authority to the Public Prosecutor to provide transportation costs to witnesses who are presented in court.
- n. Get legal advice. Regarding the witness receiving legal advice, it does not exist in judicial practice because what we know is that the suspect has the right to obtain legal advice by bringing in legal counsel who will accompany the defendant in the trial process at the Court, but regarding the witness there has been no application of this, it can be said that the witness only provide information without being accompanied and given legal advice to him.
- o. Obtain temporary living expenses assistance until the protection period ends. Regarding the cost, it is very inadequate due to the unavailability of funds provided by the government to fulfill the rights of witnesses.
- p. Get assistance. Witnesses who provide testimony in court are only accompanied by law enforcement officers, namely the police and prosecutors, but no special assistance is provided by the authorized institution, namely the Witness and Victim Institution.

From the results of research at the Banda Aceh District Court on cases of criminal acts of corruption regarding article 5 of Law Number 31 of 2014 concerning the protection of witnesses and victims, from how much the rights of witnesses contained in article 5 are not all applied in judicial practice in the Banda Aceh District Court and there are several rights that have been applied in judicial practice to cases of criminal acts of corruption, based on the articles contained in the Criminal Procedure Code concerning witness rights, namely article 112 paragraph (1), article 113, article 117 paragraph (1), article 118, article 166, article 177 paragraph (1), and article 178 paragraph (1) of the Criminal Procedure Code. There are several obstacles regarding the application of witness protection in criminal justice practices, namely :

1. Witness protection institutions that do not yet exist in Banda Aceh.
2. The witness does not submit an application to the LPSK (Witness and Victim Protection Agency) which is a condition for providing protection.
3. Funds provided for the fulfillment of witness protection in judicial practice.
4. The government has not been firm on matters relating to witness protection, especially the fulfillment of witness rights which already have regulations that guarantee it.

Factors causing different witness testimony between witness testimony of corruption in the Minutes of Examination and the Court Based on the Observations of the Banda Aceh District Court Judge

For a witness who has given information during an investigative examination, he must defend that statement [10]. The information he gave in court was as far as possible in line with the contents of the information given in the minutes made by the investigator, so that between the two statements there were no basic and fundamental differences, but there were no provisions in the Criminal Procedure Code that explained this.

Based on the results of research conducted at the Banda Aceh District Court, it can be seen that the factors that cause the difference between witnesses in the minutes of examination and those at trial are:

1. There is pressure from the examination in the investigation

In judicial practice, there is often a very striking difference in information between the statements given by witnesses in court and those given in front of investigators. When asked why witnesses gave different statements, the answers and general reasons were because the investigation process had not been guided absolutely normatively by correct and fair investigation rules. In the practice of examination in court, the defendant often withdraws his statement given at the time of the preliminary examination, with the reason that the statement was given because of forced circumstances, fear of being beaten and tortured. The humanitarian aspect that is put forward in the investigation is a test for investigators, both from the moral, humanism, social, juridical, and professional aspects of work. It is certain that in the investigation stage the investigator will be faced with obstacles that are not light, especially when collecting and sharpening evidence by making it relevant to witnesses, for example witnesses who are complicated in giving information is already a difficulty to finalize the preparation of the Minutes of Examination. (BAP). Based on the description of the obligations and competencies of investigators in the investigation, it shows that the responsibilities that must be carried out and affirmed by investigators are quite heavy. Foresight, thoroughness, accuracy, and accuracy in handling cases must be put forward, in addition to not leaving the aspect of paying attention to the interests of human values. especially when collecting and sharpening evidence by making it relevant to witnesses, for example witnesses who are complicated in providing information, it is already a difficulty to finalize the preparation of the Minutes of Investigation (BAP). Based on the description of the obligations and competencies of investigators in the investigation, it shows that the responsibilities that must be carried out and affirmed by investigators are quite heavy. Foresight, thoroughness, accuracy, and accuracy in handling cases must be put forward, in addition to not leaving the aspect of paying attention to the interests of human values. especially when collecting and sharpening evidence by making it relevant to witnesses, for example witnesses who are complicated in providing information, it is already a difficulty to finalize the preparation of the Minutes of Investigation (BAP). Based on the description of the obligations and competencies of investigators in the investigation, it shows that the responsibilities that must be carried out and affirmed by

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2. There is pressure from the defendant

In principle, witnesses can get pressure and threats outside the trial so that witnesses in giving testimony at trial witnesses feel afraid and feel not free to give and answer questions posed to witnesses.

3. Fear of giving testimony in court

In principle, the information that must be given by a witness at a court hearing is as far as possible the same as or in line with the information that has been given in the minutes of examination. However, this principle reduces the freedom of witnesses to give different statements at a court hearing from the information given at an investigation examination. However, this freedom is not intended to give the witness the freedom to fabricate lies and deny the entire information he has given in the minutes of the investigation. Freedom to give testimony in court for witnesses is not intended to reduce the meaning of the information that has been given in the minutes of the investigation examination. Moreover, if his testimony at trial contradicts and differs from what is explained in the investigation report,

Regarding witnesses who gave different statements from those in the minutes of examination during the investigation, it was regulated in Article 163 of the Criminal Procedure Code, which provides guidance to the chairman of the session on procedures for controlling the issue of differences in information. If during an examination at a court hearing a witness gives information that is different from what has been given in the minutes of examination at the investigation, the procedures that can be taken by the judge are:

- 1) Remind witnesses of the discrepancy; the judge is not justified in keeping silent if during an examination at a court trial a witness gives a different statement from that stated in the minutes of examination at the investigation, the chairman of the trial must warn the witness of the difference.
- 2) If the chairman of the trial has warned the witness, but based on the information he gives at the trial, the judge asks for information regarding the difference between the two statements in question.
- 3) Then the information and reasons given by the witness are recorded in the minutes of the trial examination.

Regarding the reasons and statements given by witnesses, whether they support it or not, the difference in the testimonies they give depends on the judge's judgment. If the difference in information is really in line with the reasons given by the witness, and the reasons can be accepted by the judge, the statements given by the witness at the trial court used by the judge make up the considerations. However, if there is a difference in information without a reasonable reason, the judge may consider the information contained in the minutes of the examination at the investigation to be correct, so that the information contained in the minutes of the examination at the investigation used by the judge shall formulate considerations. From the description, it can be seen that no matter how far the difference in the statements given by a witness, the chairman of the trial

is free to judge it, but this freedom must be based on the reasons given by the witness. if the difference in information is based on witnesses for objective and logical reasons, the difference in information is naturally justified.

CONCLUSION

The implementation of article 5 of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims at the Banda Aceh District Court as the results of research on witnesses of corruption crimes is not yet maximal in the application of witness rights, in the case of the Banda Aceh District Court as a supporter of the protection of witnesses and victims from the authorized institution, namely the Witness and Victim Protection Agency (LPSK). There are several rights that have been fulfilled, such as giving information without pressure, getting an interpreter, being free from entangling questions, getting information about the progress of the case, getting information about court decisions, getting information in the event that the convict is released and his identity is kept secret. obtaining temporary residence, obtaining new residence, obtaining reimbursement of transportation costs according to need, obtaining legal advice, obtaining temporary living expenses assistance until the protection period ends, and receiving assistance. The factors causing the differences in the statements of witnesses of corruption crimes between the minutes of examination and the trial based on the observations of the judges, as the results of research with the judges at the Banda Aceh District Court were due to legal indecision that was carried out during the examination of witnesses of corruption crimes at the investigation level, because the existence of pressure and threats from the defendant, and the fear of the witness in giving testimony in front of the trial which caused the witness not to feel free to give information that he saw, experienced, and knew.

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