

# WITNESS PROTECTION IN ELECTION DISPUTE UNDER INDONESIAN LAW

## CHAPTER I

### INTRODUCTION

#### A. Background

The right to witness protection has been clearly regulated in the 1945 constitution, because essentially every human being must be free from slavery and exploitation as an object of profit.<sup>1</sup> Legal protection is a form of service that must be provided by the government to provide a sense of security to every citizen. In accordance with Article 28 paragraph (4) of the 1945 Constitution: "Protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. Protection of human rights is very important."<sup>2</sup>

Based on the presidential election trial in the Constitutional Court in 2019, Constitutional Court Judge did not grant witness protection to the attorney Prabowo Subianto on the grounds that there was no legal basis to grant that authority in the Victim and Witness Protection Institution and it was registered at Risalah Perkara Nomor 01/PHPU-PRES/XVII/2019. The fact was that Prabowo Subianto's attorney had consulted the Witness and Victim Protection Institution about the protection of these witnesses and

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<sup>1</sup> Maidin Gultom, *Perlindungan Hukum Terhadap Anak dan Perempuan*, PT Refika Aditama, Bandung, 2014, p. 13

<sup>2</sup> Manambus Pasaribu, *Memperkuat Fungsi Lembaga Perlindungan Saksi dan Korban (LPSK) Dalam Pemberian Perlindungan dan Bantuan Terhadap Saksi dan Korban*, *Jurnal Ilmiah Simantek*, Vol. 4 No. 2 (Mei, 2020)

was approved by Witness and Victim Protection Institution if ordered by the Constitutional Court.

Fear of society of each party is certainly not allowed to be left protracted. Society must provide information about the testimony they hear, see, and watch because a witness in a judicial process is the key to obtain a material truth to uncover an event that occurs.

Legal evidence is one of the most important things needed in every case. The general definition of a witness is listed in article 1 number 26th of the Penal Code Procedure, which states: "The witness is a person who can provide information for the benefit of the investigation, prosecution and judiciary about a criminal cause that he Heard himself, he saw himself, and he experienced himself ".<sup>3</sup>

Being a witness is the obligation of every citizen, with the principle that witnesses giving actual testimony must be free without any intervention and free from pressure. But the witness is free to provide information and witnesses can also be prosecuted under article 242 of the Penal Code, if the witness provides testimony and it is not in accordance with the truth.

In the Indonesian judicial system, witnesses have a very important position so that one among five legitimate legal means of proof as stipulated in article 184 of the Penal Code Procedure (KUHAP)<sup>4</sup> is:

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<sup>3</sup> Republik Indonesia, "*Undang-undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana(KUHAP)*" dalam Hari Sasangka, Komentari Kitab Undang-undang Hukum Acara Pidana, Bandung, Mandar Maju, 2003, p. 6.

<sup>4</sup> Pasal 184 KUHAP

- a) *Keterangan Saksi* (witness testimony);
- b) *Ketereangan Ahli* (expert's testimony);
- c) *Surat* (document);
- d) *Petunjuk* (indication);
- e) *Keterangan Terdakwa* (testimony of the accused)

The position of witness testimony on the five types of legal evidence shows the importance of witness testimony in solving a case.

The importance of this witness testimony is a system of evidence adopted by the penal code that is a negative system (*negatief wettelijk*). *Negatief wettelijk* is a system of proving the court in order that a criminal can be dropped because the judges sought by the judge is a sealed truth, unlike the civil law in which it attempts to seek the formal truth. So in criminal law, the witness information greatly affects the ruling judge.<sup>5</sup>

The right of a witness to obtain legal protection is currently less effective. One of the protection of witnesses' rights that is still hopeful is the protection of witnesses and victims which is protected by the state. Protection of witnesses and victims must be given when they witness and victims must be protected by law and the state has obligation to conduct that duty. The facts show that many criminal cases and human rights violations are not disclosed and are not resolved because of physical or

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<sup>5</sup> Munir Fuady. *Teori Hukum Pembuktian Pidana dan Perdata*. (Bandung: PT Citra Aditya Bakti, 2012), h. 2.

psychological threats or criminalization of witnesses and victims or their families which makes them afraid to testify.<sup>6</sup>

The position of witnesses is very important in the judicial process, criminal, and other trials, so special legal instruments governing witness protection are needed. The empirical experience in Indonesia explains that the protection of witnesses and victims is important. The main question is that many witnesses are reluctant and do not dare to give correct information because there is no adequate guarantee, especially the guarantee of certain rights or special mechanisms to testify. The absence of this guarantee resulted in the witness's reluctance to testify in court. The Witness and Victim Protection Act is strong evidence for citizens and legislators to carry out national legal development through the formation of new laws to protect human rights, accelerate reform, support economic recovery, protect human rights, and eradicate corruption, collusion, and nepotism and international crime.<sup>7</sup>

The word witness implies a person who gives a statement or signs a testimony in a document as a legal means of proof in the day or someone who gives a description based on his or her testimony, heard by himself, perceived and experienced. Witness protection is obviously necessary to

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<sup>6</sup> Stevenlee R. E. Kahagi, Debby Telly Antow, Fonny Tawas, Perlindungan Hukum Terhadap Saksi Dalam Proses Peradilan, *Lex Crimen*, Vol. 9 No. 3 Juli 2020

<sup>7</sup> Haris Budiman dan Gios Adhiyaksa. 2015 Implementasi Penerapan Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi dan Korban. *Jurnal Unifikasi*. Vol. 2 No. 1 Januari 2015.

provide assurance and legal certainty for witnesses who have the courage to reveal the case.<sup>8</sup>

The purpose and function of the existence of the Witness Protection Act is not only limited to protecting witnesses, but also increasing effectiveness in law enforcement, especially the settlement in the major cases in Indonesia. Many witness landmark cases in Indonesia were afraid to witness because of the pressure of power, and also lack of knowledge of the law; hence, they finally chose to remain silent.

In order to find justice, the truth is needed in a case. It is very difficult to find a justice when a truth is intimidated and threatened to reveal a disaster when a witness gets pressure from the outside or inside court. The court should be able to be the last place for a witness to uncover truth to seek justice.

The Law on the Protection of witnesses and victims as a whole is considered still inconsistent because this law can only be used in criminal cases, while it should be in the major matters in each type of proceeding which should be applied when needed. This is because it will be one of the sources of salvation for witnesses who want to testify before.

The very weak law enforcement of witness protection makes witnesses unwilling to bear testimony of everything that is heard, seen, and experienced by itself. The concern is not a good accomplishment but a threat, whether physical, mental, job, social and not just that property and

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<sup>8</sup> Jimmly asshiddiqie, 2006, *Hukum Acara Pengujian Undang-Undang*, Cetakan Pertama, Konstitusi Pers. p. 221.

family can be a threat. In this case, it is necessary to study matters relating to the application of legal protection and legal certainty to witnesses in the general election at election dispute and Constitutional Court.

The discovery of law (*Rechtvinding*) is the main activity of a judge in implementing laws when concrete events occur. Law is a general principle to protect human interests and must be implemented/enforced. These are all useful in fulfilling the principle that every judge is considered to know the law.<sup>9</sup>

It is impossible for laws to regulate all human life completely and perfectly. Laws are the work of humans with very limited abilities and therefore a judge is required to carry out *rechtvinding*. The discovery of the law is intended so that justice seekers (*justitiabelen*) are guaranteed their right to obtain justice, even though written law has not regulated it.

Based on the above background, the author is interested to conduct research with the title "WITNESS PROTECTION IN ELECTION DISPUTE UNDER INDONESIAN LAW."

## **B. Problem Formulation**

Based on the background above, the research formulates the statement problem "How is the witness protection in election disputes Indonesian Law?".

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<sup>9</sup> N.E. Algra dan K. Van Duyvendijk, *Pengantar Ilmu Hukum, penerjemah: J.C.T. Simorangkir*, (Jakarta: Binacipta, 1991) p. 324

### **C. Research Objectives**

1. To understand the concept of witness protection under Indonesian law.
2. To evaluate whether Indonesian Law gives protection to the witness in election dispute.
3. To propose some recommendations for a better witness protection in election dispute.

### **D. Benefit of Research**

1. Theoretical Aspect

Providing benefits in the form of insight and knowledge in witness protection under Indonesian law.

2. Practical Aspect

Proposing recommendation to policy makers for a wider concept of witness protection in the future.