

**LEGAL PROTECTION TOWARD REPORTER'S WITNES
IN NARCOTICS CRIMINAL ACTIONS**Rufina Rambu Elo^{1, A)}, Jimmy Pello², and Karolus Kopong Medan³¹ The Law Science Post Graduate Programm, Nusa Cendana University,² The Faculty of Law, Nusa Cendana University,³ The Faculty of Law, Nusa Cendana Universitya) rufinaershi44@gmail.com**ABSTRACT**

Drug trafficking and abuse in the community must be prevented and dealt with. The public can help law enforcement officials to uncover the existence of narcotics crimes, but the consequence is the security of various narcotics drug syndicate threats that threaten the safety of the reporting person. Nevertheless, the reporter's witness testimony is an important factor in proving the truth in a narcotic criminal proceeding. This empirical juridical research aims to find out and analyze the implementation of Article 131 of Law Number 35 Year 1999 concerning narcotics in terms of: efforts to reduce narcotics distribution; obstacles in the protection of whistleblower witnesses; and legal protection efforts for reporting witnesses. Article 131 of Law Number 35 Year 2009 concerning Narcotics contains the obligation of every person to report any narcotics crime that is seen, heard and / or experienced directly. This obligation requires the participation of the community in efforts to reduce narcotics crimes. However, in its implementation law enforcement officials face obstacles when carrying out the protection of Narcotics Reporting Witnesses, namely: 1) the public does not know of any guarantees for the protection of witnesses reporting narcotics crime, so they are reluctant to report any narcotics crime seen, known and / or experienced; 2) the public is afraid of being targeted by narcotics / prikotropika / dangerous substances dealers, when reporting a narcotics crime that is seen, known and / or experienced; and 3) lack of understanding of whistleblower witness protection among police officers, causing efforts to protect whistleblower witnesses not optimally implemented. Protection of Reporting Witnesses in Narcotics Crimes is regulated in Law 13 of 2006 concerning Protection of Witnesses and Victims which has been amended by Law 35 of 2014. Reporting Witnesses have the right to feel safe in giving testimony in court. Police officers as law enforcers have an important role in ensuring that the Witness and Victim Protection Agency (LPSK) provides guarantees for the protection of Reporting Witnesses and Victims properly. Therefore, preventive efforts to involve the active role of the community in preventing narcotics-free circulation need to continue to be promoted by the National Narcotics Agency and the Indonesian National Police, targeting groups that are likely to be exposed to narcotics crime. In addition, the Indonesian National Police and the National Narcotics Agency (BNN) are required to provide socialization and legal counsel on the protection of witnesses and victims both to the general public and to prison residents, so that perpetrators and / or victims dare to submit themselves as Reporting Witnesses and / or Victims. Specifically for NTT Regional Police (POLDA), it is expected to establish coordination and consolidation on a regular basis with the Witness and Victim Protection Agency (LSPK) in NTT, to ensure the Reporting Witnesses and / or Victims or Families get a sense of security and their rights are protected in accordance with the Law 13 of 2006.

Keywords: *law protection, reporter's witness, narcotics.*

INTRODUCTION

Circulation and abuse of narcotics in the community must be prevented and dealt with, because narcotic threatens the survival of the Indonesian nation. The mandatory prevention and control of narcotics by the State is carried out by law enforcement officials,

namely the Indonesian National Police (POLRI) and the National Narcotics Agency (BNN) of the Republic of Indonesia.

Efforts to prevent the illicit trafficking of narcotics are usually carried out through various socialization activities and legal counseling to groups that are potential targets for narcotics distribution. Various legal information relating to the dangers of narcotics and legal threats are conveyed to the target information, with the hope of providing awareness to them to stay healthy and not fall into narcotics. While efforts to tackle illicit trafficking of narcotics are carried out through law enforcement against narcotic offenders through the procedure of the criminal justice system.

The role of the community can be through the fields of prevention, rehabilitation, and eradication. The best participation in the field of prevention, bravely refusing drug abuse and daring to report distribution information around it. Community participation in combating drug abuse is regulated in Chapter XIII Article 104 to Article 108 of Law No. 35 of 2009, about Narcotics. "The community has the broadest opportunity to play a role in helping to prevent and eradicate abuse and illicit trafficking of narcotics and narcotics precursors".

The rights of the community in efforts to eradicate narcotics in the surrounding environment include several things as written in Article 106 of Law 35 of 2009, as follows:

1. Finding, obtaining, and providing information on the allegation that narcotics and precursor narcotics have occurred;
2. Obtaining services in searching for, obtaining, and providing information about allegations of narcotic crime and narcotics precursors to the law enforcers or BNN who handle narcotics and narcotics criminal cases;
3. Delivering suggestions and opinions responsibly to law enforcement or BNN that handles cases of narcotic crime and narcotics precursors;
4. Obtaining answers to questions about the report given to law enforcement or BNN; and
5. Obtain legal protection when the person concerned exercises his rights or is asked to be present in the judicial process.

For this reason, people who know about the existence of drugs but do not report can be sentenced to prison. The threat is stated in Law number 35 of 2009 concerning Narcotics. Article referred to in Article 131. It is stated that anyone who deliberately fails to report narcotics offenses is liable to a maximum sentence of one year in prison and / or a maximum fine of Rp 50 million.

Reporting witness testimony is an important factor in proving the truth in a trial process, this is clearly illustrated by placing witness testimony in the first place above other evidence. Likewise in the next process, at the prosecutor's level until finally in court, witness testimony as the main evidence becomes the judge's reference in deciding whether a defendant is guilty or not. It is clear that witnesses have a very large contribution in efforts to uphold law and justice. As Leden Marpaung said, "The witness's statement was given without pressure from anyone and in any form".

The importance of guaranteeing security and protection so that people do not feel afraid to report crimes related to narcotics crimes and with guarantees that are real and can be felt by a witness, so that more people will dare to be witnesses. UU no. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims is expected to provide protection for witnesses and reporters who have a core of justice and truth and be able to guarantee certainty, order, enforcement and legal protection for witnesses and respect the human rights that are rights of a witness so that it helps in opening veil the crime of criminal cases and reveal the truth of a criminal act that has occurred. Based on the explanation above, the seriousness of the problem of protecting witnesses in reporting narcotics crime, and warm to be an important issue that became the discussion of law practitioners, students and especially law enforcement officers.

MATERIALS AND METHODS

3. Materials

c. Law Protection

According to Fitzgerald, Salmond's Legal Protection Theory that the law aims to integrate and coordinate various interests in society because in a traffic of interest, protection of certain interests can be done by slaughtering various interests on the other hand. The interest of law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection born of a legal provision and all legal regulations provided by the community which are basically a community agreement to regulate the behavioral relationship between members of the community and between individuals and the government that is considered to represent the interests of the community.

According to Satijipto Raharjo, legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the public so that they can enjoy all the rights granted by law. According to Pjillipus M. Hadjon that legal protection for the people as a government action that is preventive and responsive. Preventive legal protection aims to prevent disputes, which direct government actions to be careful in making decisions based on discretion and responsive protection aims to prevent disputes, including handling in judicial institutions.

According to Lili Rasjidi and I.B Wysa Putra that the law can be used to realize protection that is not merely adaptive and flexible, but also predictive and antipative. Legal protection is an illustration of the operation of the legal function to realize legal objectives, namely justice, usefulness and legal certainty. Legal protection is a protection given to legal subjects in accordance with the rule of law, both those that are

preventive and in a repressive form, both written and unwritten in the context of enforcing the rule of law. Essentially everyone has the right to get protection from the law. Almost all legal relations must receive protection from the law. Therefore there are many kinds of legal protections.

So far, the regulation of victim protection has not revealed a clear pattern, in the current positive criminal law the protection of victims is more "abstract protection" or "indirect protection". This means that the various formulations of criminal acts in the laws and regulations so far have in essence had direct abstract protection against the legal interests and rights of victims.

Indirect protection in positive law regulations has not been able to provide maximum protection. Because the reality in Indonesia shows that certain applicable laws have not been able to guarantee certainty and a sense of justice.

d. Reporting Witness

a) The definition of reporting witness

Based on the main objective of the criminal procedure law, the purpose of the criminal procedure law is to seek and obtain the complete truth and the community must not be the judge themselves. Then we can clearly understand that criminal procedural law is very important to get or find truth in order to get justice. Efforts to find a bright spot on the allegation that a crime has occurred is necessary to support evidence that the crime has indeed taken place.

The evidence intended here is evidence that is directly or indirectly related to the crime that occurred. For direct evidence including the existence of victims who were clearly harmed both physical and spiritual losses they suffered, while the witnesses who saw, knew or heard themselves have committed a crime.

The above evidence is very helpful in efforts to resolve a crime that occurred in the community. One of the required evidences is not fulfilled, it will be difficult for law enforcers to resolve criminal cases. If a criminal act that occurs cannot be resolved in the life of the community it means that what is the goal of the law is never achieved, namely creating a sense of justice and prosperity for the whole community and more specifically the purpose of the criminal procedure law will not be achieved a material truth or truth true (which is true) which will ultimately be achieved justice that is felt by all parties.

Article 1 point 26 of the Criminal Code:

"A witness is a person who can provide information for investigations, prosecutions and trials regarding a criminal case which he heard himself, saw for himself and experienced himself".

Based on the understanding mentioned in Article 1 point 26 of the Criminal Code above, several conclusions are drawn which are the conditions of witnesses, including:

1. People who see or witness with their own eyes a crime.
2. People who hear themselves about a crime.
3. People who have experienced it themselves and / or people who are directly victims of events that constitute criminal acts.

Based on the above understanding, it is clear that the witness in giving his testimony before the trial can directly give his testimony during the trial.

b) Reporting witness

R. Soesilo said that being a witness is a legal obligation, so if judicially reviewed, the witness's statement is the main evidence in determining whether a case is being examined or not. People whose testimonies are heard as witnesses require certain conditions. Reporting Witness or Collaborator Witness (Justice Collaborator), is a person who cooperates or can be defined as a person who is also

a criminal offender who helps law enforcement officials to uncover and / or return the assets / assets / results of a serious and organized crime by giving testimony in the process Justice. Meanwhile, according to the Indonesian Supreme Court Circular Letter (SEMA) Number 04 of 2011, dated August 10, 2011 concerning Treatment for Crime Reporters (Whistleblowers) and witnesses of cooperating actors (Justice Collaborators) in certain criminal cases, Justice Collaborators are witnesses who also a criminal offender who helps law enforcement officials to uncover a crime and / or return assets / proceeds of a crime to the state by providing information to law enforcement officers and giving testimony at the Court. Guidelines for determining someone as a witness Collaborating Actors (Justice collaborators) are concerned are one of the perpetrators of certain crimes, acknowledge the crime committed, not the main perpetrator in the crime and provide information as a witness in the judicial process.

4. Method

This empirical juridical research aims to find out and analyze the implementation of Article 131 of Law Number 35 Year 1999 concerning narcotics in terms of: efforts to reduce narcotics distribution; obstacles in the protection of whistleblower witnesses; and legal protection efforts for reporting witnesses.

RESULT AND DISCUSSION

1. Obligation to Report a Narcotics Abuse Act (Article 131 of the Narcotics Act Number 35 Year 2009)

1.1 Obligation to Report Under Article 131 of Law No. 35 of 2009, concerning Narcotics Crimes

As a good citizen, everyone who sees and knows about the distribution of drugs must report it to the authorities. This obligation is regulated in Article 131 of the Narcotics Law, which reads:

"Any person who deliberately does not report any criminal offenses as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, Article 127 paragraph (1), Article 128 paragraph (1), and Article 129 shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of Rp 50,000,000, 00 (fifty million rupiah) ".

The word "every person" is a combination of 2 (two) words, namely "every" and "people". The word "every" comes from the basic word "every", which means one; each. While the word "person" means:

people n 1 human (in a special sense); 2 humans (indefinite third self change): do not quickly believe in the mouth -; 3 himself; own human being: I did not meet him; 4 classifying words for humans: five - fishermen; 5 subordinates: they are the sub-district heads; 6 people (from a country); Citizens: - Pakistan; 7 people who come from or live in an area (village, city, country, etc.): he - Bogor; her husband - Europe; 8 ethnic groups; 9 other humans; not yourself; not the people (groups, relatives) themselves: let alone their own children, even children - I help; country - another country (not our country); 10 cak because (actually): which one can pay, - not payday; - sing on the stage, - play in his heart, PB according to the taste (at will) of each other's hearts; - parents are taught to eat bananas, PB people who already know (expert, smart) do not need to be taught; such as waiting - first, chasing after people, pb in vain.

Thus the word "everyone" can be interpreted as individual citizens or citizens. Any person who intentionally fails to report a criminal offense related to narcotics is liable to a maximum of 1 (one) year imprisonment or a maximum fine of Rp.50,000,000.00 (fifty million rupiah). The threat of punishment from this crime is a prison sentence or a fine. This means that a person who intentionally fails to report a narcotics crime can be sentenced to a maximum of 1 (one) year imprisonment or a maximum fine of IDR 50,000,000 (fifty million rupiah).

The narcotics crime threatened above is stated in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124 , Article 125, Article 126, Article 127

paragraph (1), Article 128 paragraph (1), and Article 129, which can be described sequentially as follows:

- 1) Without the right or against the law of planting, maintaining, owning, storing, controlling, or providing Narcotics Group I in the form of plants.
- 2) Without the right or unlawfully owning, storing, controlling, or providing Narcotics Group I, not plants.
- 3) Without the right or against the law of producing, importing, exporting, or distributing Narcotics Group III.
- 4) Without the right or unlawfully offering to sell, sell, buy, accept, be an intermediary in buying and selling, exchanging or submitting Narcotics Group I.
- 5) Without the right or unlawfully carrying, sending, transporting, or transmitting Narcotics Group I.
- 6) Without the right or against the law to use Narcotics Group I against others or to give Narcotics Group I for use by others.
- 7) Without the right or unlawfully owning, storing, controlling, or providing Narcotics Group II.
- 8) Without the right or against the law of producing, importing, exporting, or distributing Narcotics Group II.
- 9) Without the right or unlawfully offering to sell, sell, buy, accept, be an intermediary in buying and selling, exchanging or submitting Narcotics Group II.
- 10) Without the right or unlawfully carrying, sending, transporting, or transmitting Narcotics Group II.
- 11) Without the right or against the law to use Narcotics Group II against others or to give Narcotics Group II for use by others.
- 12) Without the right or unlawfully owning, storing, controlling, or providing Narcotics Group III.
- 13) Without the right or against the law of producing, importing, exporting or distributing Narcotics Group III.
- 14) Without the right or unlawfully offering to sell, sell, buy, accept, be an intermediary in buying and selling, exchanging or submitting Narcotics Group III.
- 15) Without the right or unlawfully carrying, sending, transporting, or transmitting Narcotics Group III.

- 16) Without the right or against the law to use Narcotics Group III against others or to provide Narcotics Group III for use by others.
- 17) Every abuser:
 - a. Group I Narcotics for oneself;
 - b. Group II Narcotics for oneself; and
 - c. Narcotics Group III for yourself.
- 18) Parents or guardians of addicts who are not old enough, who deliberately do not report.
- 19) Without rights or against the law, because:
 - a. owning, storing, controlling, or providing Narcotics Precursors for the manufacture of Narcotics;
 - b. produce, import, export or distribute Narcotics Precursors for Narcotics manufacturing;
 - c. offer to sell, sell, buy, accept, be an intermediary in buying and selling, exchanging, or handing Narcotics Precursors to manufacture Narcotics; and
 - d. bring, send, transport, or transform Narcotics Precursors for Narcotics manufacturing.

1.2 Community Participation in Relation to Law Number 35 Year 2009, concerning Narcotics Crimes

The role of the community as part of social control in Law Number 5 of 1997 concerning Psychotropic is not yet clearly covered, because it is only stated as a participation. This makes the position of the community not pro-active but waiting to be invited. In addition, there is a need for legal certainty in guaranteeing protection for witnesses / reporters. While in Law 35 of 2009 concerning Narcotics, community participation is regulated starting from Chapter XI on Prevention and Eradication, Part Three of Article 70, which states that the duties of BNN include:

1. Empowering the public in the prevention of abuse and illicit trafficking of Narcotics and Narcotics Precursors; and
2. Monitoring, directing, and increasing community activities in the prevention of abuse and illicit trafficking of Narcotics and Narcotics Precursors.

2. Obstacles in the Implementation of Article 131 of Law 35/2009 relating to the Protection of Narcotics Reporting Witnesses

- 1) Lack of understanding of parties related to narcotics crime regarding the protection of witnesses reporting narcotics crime. This causes the parties concerned are reluctant to report a narcotic crime as regulated in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, Article 127 paragraph (1), Article 128 paragraph (1), and Article 129 of Law Number 35 Year 2009.
- 2) During this time the victim protection arrangement has not revealed a clear pattern. In the positive criminal law applicable at this time the protection of more victims is "abstract protection" or "indirect protection". This means that the various formulations of criminal acts in the laws and regulations so far have in essence had direct abstract protection against the legal interests and rights of victims. Indirect protection in the positive legal regulations has not been able to provide maximum protection, because the reality in Indonesia shows that the law in force has not been able to guarantee certainty and a sense of justice.
- 3) Based on Fitzgerald's theory, that the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can be done by slaughtering various interests on the other hand; there are various interests in the enforcement of a narcotic crime, including when the police carry out the protection of victims' witnesses. Law enforcement officials need to consider the various interests of the parties involved in a narcotic crime. This is so that the protection of the interests of a person treated as a victim witness does not necessarily lead to a massacre of the interests of other parties.
- 4) The strength of the Witness and Victim Protection Agency (LPSK) is not yet complete. Capacity Building is a process to improve the ability of individuals, groups, organizations, communities or communities to analyze their environment; identify problems, needs, issues and opportunities; formulate strategies to address these problems, issues, and needs and take advantage of relevant opportunities. Design an action, and collect and use effectively, and on the basis of sustainable resources to implement, monitor and evaluate the action plan, and use feedback as lessons. And, in terms of capacity building, witness and victim protection institutions do not yet have

full strength, because capacity building is not only related to office and staffing administrative matters, but includes a protection model that will be obliged to compensate for the loss of a person's livelihood because of his involvement in this program. The amount given may change from time to time, this is because it is adjusted to the needs of the witness. This compensation is only given to witnesses who have worked before joining this protection program. For those who do not work, there will be no compensation except for incidental expenses in their activities as witnesses. The amount of compensation is determined by a special commission and adjusted to the number of dependents owned by the witness.

3. Efforts and Implementation of Reporting Witness Protection in Narcotics Abuse Acts refer to Article 131 of Law No. 35 Year 2009

Various efforts to prevent the illicit trafficking of narcotics, psychotropic substances and hazardous substances carried out by BNN through advocacy coordination meetings, supervision, networking, assistance, monitoring and evaluation, technical guidance, and interventions targeting the government, private sector and educational environment. While information dissemination activities target the community, workers, students and students. There are 4 (four) media used for information dissemination, namely online media, broadcast media, print media and conventional media.

In 2016, BNN conducted 17 times advocacy in the community by involving 653 participants; and 4 times advocacy in the private environment involving 90 participants. While information dissemination in the community was carried out 3,216 times and with a total of 27,320,859, in the student environment was carried out 2,826 times with a distribution of 7,751,095, workers were carried out 791 times with a distribution of 775,225, and in the student environment carried out 432 times with a distribution of 207,639.

In 2017, BNN conducted 1,210 advocacies within the government environment involving 31,856 participants; and 267 times private sector advocacy involving 3,491 participants. While information dissemination in the community was carried out 3,216 times and with a total of 27,320,859, in the student environment was carried out 2,826 times with a

distribution of 7,751,095, workers were carried out 791 times with a distribution of 775,225, and in the student environment carried out 432 times with a distribution of 207,639. this means that for information dissemination activities, there is no change in the number of activities and the number of participants both in 2016, 2017 and 2018. An increase in the number of activities and activity participants occurred in advocacy activities for the same element, namely the private sector, increasing in 2017 to 263 more than in 2016, and participants also increased to 3,401 more participants in 2017 compared to 2016.

Furthermore, in 2018, BNN carried out 273 times of advocacy in the educational environment by involving 14,427 participants; and 752 times advocacy in the government circles involving 10,927 participants. While information dissemination in the community was carried out 3,216 times and with a total of 27,320,859, in the student environment was carried out 2,826 times with a distribution of 7,751,095, workers were carried out 791 times with a distribution of 775,225, and in the student environment carried out 432 times with a distribution of 207,639. This means that for information dissemination activities, there was no change in the number of activities and the number of participants in 2016 and 2017. The increase in the number of activities and activity participants occurred in advocacy activities for the same element, namely the government, down from 1,210 advocacy activities in 2017 to only 273 times advocacy in government circles with the target of participants also decreasing, namely from 31,856 participants in 2017 to 14,427 participants in 2018.

CONCLUSION

Based on research relating to the legal protection of Reporting Witnesses in Narcotics Crimes, it can be concluded, as follows:

1. Article 131 of Law Number 35 Year 2009 concerning Narcotics contains the obligation of every person to report narcotics crime that is seen, heard and / or experienced directly.

This obligation requires the participation of the community in efforts to reduce narcotics crimes.

2. Obstacles to protection of Narcotics Reporting Witnesses as stipulated in Article 131 of Law Number 35 Year 2009 concerning Narcotics, namely: 1) the public does not know of any guarantees for witness protection for narcotic crime, so they are reluctant to report a narcotics crime seen, known and / or experienced; 2) the public is afraid of being targeted by narcotics / prikotropika / dangerous substances dealers, when reporting a narcotics crime that is seen, known and / or experienced; and 3) lack of understanding of whistleblower witness protection among police officers, causing efforts to protect whistleblower witnesses not optimally implemented.
3. Protection of Reporting Witnesses in Narcotics Crimes is regulated in Law 13 of 2006 concerning Protection of Witnesses and Victims which has been amended by Law 35 of 2014. Reporting Witnesses have the right to feel safe in giving testimony in court. Police officers as law enforcers have an important role in ensuring that the Witness and Victim Protection Agency (LPSK) provides guarantees for the protection of Reporting Witnesses and Victims properly.

RECOMMENDATION

Referring to the conclusions above, the researcher can recommend several things, as follows:

1. Preventive efforts to involve the active role of the community in preventing narcotics-free circulation need to continue to be promoted by the National Narcotics Agency and the Indonesian National Police targeting groups that have the possibility of being exposed to narcotics crimes.
2. The State through the police and BNN are required to provide socialization and legal counsel regarding the protection of witnesses and victims both to the general public and to prison residents, so that the perpetrators and / or victims dare to submit themselves as Reporting Witnesses and / or Victims.
3. NTT Regional Police (POLDA) need to establish coordination and consolidation on a regular basis with the Witness and Victim Protection Agency (LSPK) in NTT, to ensure the Reporting Witnesses and / or Victims or Their Families get a sense of security and are protected by their rights in accordance with the Law of 13 Years 2006 concerning Witness and Victim Protection which has been amended by Law 35 of 2014.

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