

**THE URGENCY OF REPRESENTATIVES ESTABLISHMENT OF WITNESESS AND
VICTIMS PROTECTION AGENCY (LPSK) IN LOCAL AREAS**

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THE URGENCY OF REPRESENTATIVES ESTABLISHMENT OF WITNESSES AND VICTIMS PROTECTION AGENCY (LPSK) IN LOCAL AREAS

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Abstract

Granting protection of witnesses and/or victims by LPSK that standing only in the capital of the Republic of Indonesia, Jakarta, there are problems to be debate among legal practitioners. The problem comes when a large number of requests that come to the LPSK is derived from various regions across Indonesia in the motherland, which often witnesses and/or victims who came from across the region who are far enough away will certainly require a large fee to head to Jakarta so that witnesses and/or victims are having trouble accessing request protection to LPSK. LPSK itself set in Article 11 of Law On Witnesses and Victims Protection. Representatives establishment office in fact already regulated on Article 11 paragraph (3), but in practice despite the fact a lot of the problems that come from the region, LPSK up to this moment does not form a representative in the local area.

Keyword : Granting Protection, Witnesses and/or Victims, Witnesses and Victims Protection Agency (LPSK), Local Area.

I. Background

Indonesia is a State Law as stated in Article 1 paragraph (3) of the Constitution 1945. Indonesia as a state law recognizes and protects the rights of individuals are reflected in the principle of equality before the law, as regulated in Article 27 paragraph (1) of the Constitution of 1945, which states that, "All citizens are equal before the law and government and shall abide the law and government, with no exceptions".

Protection and legal assistance to the individual rights of Indonesia citizen is also regulated in the constitution especially Article 28, paragraph (1) of the Constitution 1945, which states that, "Everyone has the right to recognition, security, protection, legal aid, legal certainty and equality before the law". Equality before the law as mentioned above, has a direct impact or effect on the provision of access to justice. In addition, the Constitution 1945 has also concerned about human rights as regulates in paragraph 28J (1) that, "Every person shall respect the human rights of others in an orderly society, nation, and state."

Equality before the law, and the high respect of human rights for all Indonesian citizens who formulated in the constitution can be realized with the guarantee from the State or the Government of Indonesia for its citizens to obtain justice. In terms of good treatment, fair and equal standing before the law to also include the notion of equality before the law both to witnesses and victims within the Criminal Justice System in Indonesia.

The criminal justice system is the basis for the settlement of the criminal case held pursuant to Act No. 8 of 1981 on Criminal Procedure (hereinafter referred to as Code of Criminal Procedure). Criminal Procedure Code is a formal criminal law and became the basis for the organization of the Indonesian criminal justice system, there is less in providing protection for witnesses and victims of crime. This is because the Criminal Procedure Code as a guide in the practice of criminal proceedings in Indonesia is still oriented towards protection against criminals (Offender Oriented).

In the practice of criminal justice in Indonesia, often the interests of the victims suffering and losses, which includes both formal and substantive less attention. Victims of crime are placed just as evidence is only as a witness to the possibility for victims to gain their rights in the fight for freedom is small. So the Indonesian Government needs to formulate a law, that is Act

No. 13 of 2006 on the Witnesses and Victims Protection are expected to fulfill the rights of witnesses and victims.

Witnesses and Victims Protection Agency (LPSK) regulated in that law. LPSK located in the capital of the Republic of Indonesia, namely in Central Jakarta. At the end of 2013, there were 1555 incoming request for protection of witnesses or victims.¹ In the year has increased significantly compared to previous years, ie in 2012 there were 655 petition, and in 2011 and 2010 the number of applications received by the Agency less than 500 petition.²

Most of the applicants of witnesses and victims protections are human rights violations, corruption, trafficking, narcotics, terrorism, and domestic violence, with details of corruption cases as 50 witnesses who ask for protection, 77 of witnesses trafficking, narcotics as 5 witnesses, terrorism as 2 witnesses, and domestic violence as much as 4 witnesses who ask for protection. Various witnesses reported to the LPSK comes from all regions in Indonesia include North Sumatra, West Java, East Java, South Sulawesi, South Sumatra, Central Java, West Sumatra, North Sulawesi, West Kalimantan, Banten, Bengkulu, Riau, Regional Yogyakarta (DIY), and West Nusa Tenggara.³

In Indonesia, LPSK recently established. Legislation governing the protection of witnesses and victims in particular formed in 2006 and in mid 2008 the newly formed and its personnel of LPSK. In carrying out its duties in witnesses and victims protection, LPSK often experience difficulty in reaching the witnesses and victims in various regions in the country and Indonesia, vice versa witnesses and victims often experience difficulty in accessing protection request to LPSK. In this paper, the authors take several fact issues are:

1. Of the 33 provinces in Indonesia, reporting that goes into LPSK derived from the nearly several provinces. Because there is no LPSK representatives in the local areas, finally had to Jakarta. If the applicant society comes from remote areas far enough to go to Jakarta certainly is not easy to reach LPSK, it takes a huge cost.

¹Tren Ancaman Terhadap Saksi dan Korban. Mys.
<http://www.hukumonline.com/berita/baca/lt52bf838007db9/tren-ancaman-terhadap-saksi-dan-korban>. Accessed on 25 March 2014.

² *ibid*

³ Badan Pusat Statistik, Statistik Kriminal Tahun 2012-2013.
http://www.bps.go.id/hasil_publicasi/stat_kriminal_2013/index3.php?pub=Statistik%20Kriminal%202013.
Accessed on 24 March 2014

2. The effectiveness of treatment, ie ensure that witnesses or complainants in conveying information. If a witness / complainant difficult conveying the information, it also affects the difficulty of uncovering criminal acts in court.
3. The need for LPSK at the local level to optimize the role of protection Agency. Because often in criminal cases in the area are often more severe than in Jakarta that require protection.
4. Stanli Ering, the whistle blower in cases of corruption fund research and development laboratory building, State University of Manado (UNIMA) . He " attacked " behind , with a defamation claim. The panel of judges , chaired Tigor Manullang SH MH concluded : Ering convicted of the crime of defamation UNIMA Rector , Prof. Dr. Ph. EA Tuerah , MSI, DEA.
5. Seluma , Bengkulu . A total of 10 members of parliament who are witnesses incriminating Selumba Regents , Murman Effendi , a suspect in a bribery case in the form of checks to 27 local legislators Seluma , often received death threats from unknown people.

II. Legal Problem

Based on the facts above problems, such as go to LPSK reporting from several provinces in Indonesia, Because there is no representatives in the LPSK in local areas, finally had to Jakarta. If the applicant society comes from remote areas far enough to go to Jakarta certainly is not easy, it takes a huge cost, both in terms of the effectiveness of treatment, and all three need to optimize the role of LPSK for protection is often in criminal cases in the area are often more severe than in Jakarta that require protection. The authors take the formulation of the problem as follows:

1. What is the urgency underlying the formation of the Witnesses and Victims Protection Agency (LPSK) in the local areas?
2. How to model of formation of the Witenesse and Victims Protection Agency (LPSK) in the local areas to optimize the protective role of LPSK?

III. Analysis

A. Witness and Victims in the Criminal Justice System

Victims have an important position in the criminal justice system in which the problems of victims of crime in the criminal justice system has changed the orientation of disciplines

victimology, as a discipline that takes the victim in the field of study that examines a broad sense in the act (Victimology of arts) to study a movement (Victimology of action) that supports the movement of care for victims of crime.⁴

The concept of crime and victims of crime who are two points of measurement to explain how the legal position of victims. There are two concepts of crimes, first, crime is understood as a violation of state or public interest made by the instruments of the democratic state. Second, crime is understood as a violation of the interests of the individual and also against the interests of society, state, and also against the interests of the perpetrators themselves. The first concept is the basis of a concept of retributive justice (retributive justice) and the second concept is the basis of the concept of restorative justice (restorative justice).

The position of the victim in the form of the Criminal Procedure Code:

1. Criminal Procedure Code has not been explicitly formulated in concrete terms or directly providing legal protection for victims, for example in the case of criminal punishment shall consider the effect of a criminal offense against the victim or the victim's family. Criminal Code also does not formulate the type of criminal restitution (compensation) is actually very beneficial to the victim and / or victim's family.
2. Criminal Code holds the neoclassical affiliations include receiving the enactment of mitigating circumstances for criminal concerning the physical, mental and environmental. Similarly, aspects of mitigating punishment for perpetrators to accountability in part, on the specific matters, such as his soul defective (mad), a minor, and so on. That arrangement oriented Penal Code against the perpetrators even victims tend to be forgotten.⁵

In the process of criminal justice is one of testimony in a legal obligation to disclose the truth. Criminal Procedure Code gives the first rank for the statements of witnesses (including victims), followed by expert testimony, letters, instructions, and the testimony of the defendant in support of truth disclosure at trial. The state party through the Public Prosecutor to prove the truth of the charges by asking the defendant or perpetrator and witnesses who hear, see, and

⁴ Matti Joutsen. **The Role of The Victim of Crime in European Criminal Justice System**. Heuni, Helsinki. 1987. Hlm 151.

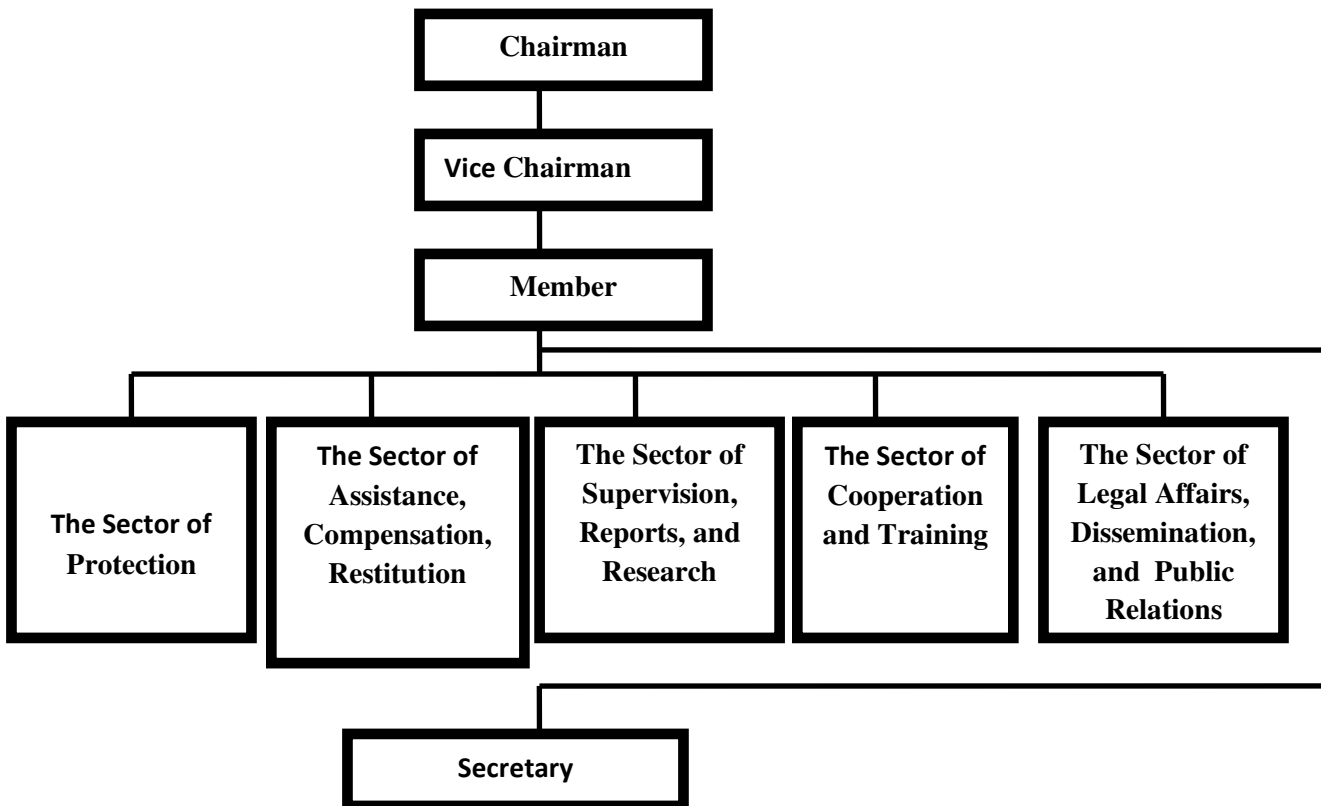
⁵ Rena Yulia. **Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan**. Graha Ilmu. Yogyakarta. 2010. Hlm 181-182.

experience the events related to the offense charged. The witnesses shall be summoned to give testimony and forced to fulfill obligations to the state, which gave testimony in court.

Statements of witnesses and victims either a charge or a de charge is very important to uncover the truth and establish the guilt of the accused judge beliefs and also about the criminal responsibility of the accused. The role of victims in the criminal justice system is crucial in terms of proof, in addition to other witnesses as valid evidence in criminal proceedings.

B. The Legal Position of Witnesses and Victims Protection Agency (LPSK) in Center (Central Jakarta)

1. Components of Witnesses and Victims Protection Agency (LPSK)



Description of Chart:

1 . Sector of Protection

- a. Standart Operational Procedure (SOP) Protection
- b. Protection services
- 2. Sector Assistance , Compensation , and Restitution
 - a. SOP of Help
 - b. SOP of Compensation and Restitution
 - c. Assistance Services , Compensation , and restitution
- 3. Legal Affairs , Dissemination , and Public Relations
- 4 . Supervision , Research - Development and Reporting
- 5 . Cooperation and Education Training
 - a. Preparation of the Joint Rules or Memorandum of Understanding with the Agency related authorized agencies.
 - b. Preparation of educational modules - Agency Training
 - c. Education - Training Implementation Agency
- 6.Chief Secretariat (Secretary formation)
 - a. institutional strengthening
 - b. Preparation of the Rules of Procedure of the Office Manuscript
 - c. SOP of Finance
 - d. SOP of Development Administration
 - e. Procurement SOP and Filing
 - f. Conference / National Seminar

Membership of the Agency in the period 2008-2013 was appointed by the President in his capacity as Head of State through Presidential Decree No. 65 / P of 2008 dated August 8, 2008 by Presidential Decree.

In carrying out its duties Agency consisting of , elements of Leadership and Members . Agency leadership element consists of the Chairman and Vice Chairman are concurrently members elected from and by the members of the Agency. Implementation of Agency activities carried out by some members that are responsible for the areas of Field Protection, Field Assistance, Compensation, and Restitution, Cooperation, Sector Institutional Development and Dissemination of Legal Affairs and Public Relations.

In order for the duties and functions of the Agency , as mandated by Law. 13 of 2006 can run , then a secretary appointed by Permensesneg No. . 5 of 2009 on the Organization Secretariat of the Agency Work Procedure

2. Mechanisms to Get Witnesses and Victims Protection⁶

1. The Witnesses and/or Victims, either by their own initiative or by request from an authorized official, can request for protection in writing to Witnesses and Victims Protection Agency;
2. Providing protection and assistance to witnesses and / or victims is determined and based on the Plenary Session of the Agency Decision Agency ;
3. In the event the Agency receives the application , witness and / or victim in question is obliged to sign a statement of willingness to follow the terms and conditions of the protection of witnesses and victims ;
4. Protection Agency awarded to witness and / or victim and their family since the signing of the statement of willingness ;
5. Protection of Witness and / or Victim awarded since the signing of an agreement for protection ;
6. Financing protection and assistance provided by the State Budget;
7. Protection of Witnesses and / or Victims can only be terminated by reason :
 - (a) the own initiative of the witness and / or victim are protected ,
 - (b) at the request of the competent authority ,
 - (c) a witness and / or victim violated the provisions as stated in the agreement , or
 - (d) The Agency argues that the witness and / or victim is no longer worthy of protection based on convincing evidence , and
8. Cessation of protection for witnesses and / or victims must be made in writing.

⁶ Article 29, 30, 31, and 32 Act Number 13 of 2006 About Witnesses and Protection

C. The Urgency Underlying the Representatives Establishment of the Witnesses and Victims Protection Agency (LPSK) in Local Areas

1. Local Government System in Indonesia

In the system of government in Indonesia, there are three principles that apply in governance. Among them:

a. The principle of decentralization ;

Is the transfer of power to the government by the Government of the Autonomous Region in the framework of the Unitary Republic of Indonesia. Government affairs has been handed over to the area in order to implement the principle of decentralization is essentially becoming the authority and responsibility of the area completely. In this case the initiative is left entirely to the area , both involving the determination of policy, planning, implementation, as well as aspects related to financing. Apparatus implementation is regional offices.

b. Co-administration (medebewind),

In this principle, co- determination policy, planning and financing remain in the central government, but the device is executing the device area.

c. The principle of deconcentration

is because not all matters submitted to the central government to the regions according to the principle of decentralization , the affairs were conducted by the Central Government existing tools in the area based on the principle of deconcentration. Matters delegated by the Government to its officials in the regions according to the principle of the deconcentration remains the responsibility of the central government either concerning the planning, implementation, and financing. Element is the executing agencies vertical operationally coordinated by the Regional Head in his capacity as the Central Government.

Based on the above three principles , the authors take the principle of decentralization to the establishment of LPSK in the local areas, as deemed most fitting. Because the transfer of authority to the government by the Government of the Autonomous Region in the framework of the Republic of Indonesia. Government affairs has been handed over to the area in order to implement the principle of decentralization is essentially becoming the authority and responsibility of the area completely. In this case the initiative is left entirely to the area, both

involving the determination of policy, planning, implementation, as well as aspects related to financing. Implementation apparatus is composed of professionals in the field of the promotion element, fulfillment, protection, enforcement, law and human rights, police, prosecutors, academics, lawyers, or non-governmental organizations from the region.

2. Theory of Legal Purposes

In the analysis of the formation of the urgency of LPSK in local areas, the author uses three theories legal purposes, among others:

a. Ethical Theory

According to the ethical theory of law 's sole purpose is to create justice. Ethical theory called for the law to be determined solely by our ethical awareness of what is fair and what is unfair .

Based on the above ethical theory, any witnesses or victims deserve justice in the receiving facility or the efforts exerted by LPSK, such as receiving the protection of personal security (including the security of their family, his possessions, free from the threat with respect to the testimony that will be, being, or has been given), participating in the process of selecting and determining the form of protection and security support, provide information without pressure, to an interpreter, free of ensnaring questions, get information on the progress of the case, obtain information regarding the court decision, knowing the freed convict, got the new identity, get a new residence, obtain reimbursement of transportation costs in accordance with the requirements, obtain legal counsel, and/or obtain temporary living expenses until the time limit expires protection with immediate and direct .

b. Utilistic Theory

According to this theory , the purpose of the law is to bring benefit or happiness as much as possible for as many people .

Based on the above theory, when LPSK was established in the local areas, then it will bring benefit or happiness as possible for witnesses or victims to be appealed to LPSK. Because of their access to protection easier and faster .

c. Theory of the Middle Way (Mixed)

According to this theory , the purpose of law is to regulate social life peacefully. This theory seeks to accommodate between fairness, usefulness, and happiness as the purpose of the law. Related to the purpose of this law, Purnadi Purbacaraka and Soerjono Seokanto said that the purpose of the rule of law is alive interpersonal peace. That peace meliputi two things, namely the external order of interpersonal and personal internal tranquility.

Based on the theory of middle ground (mixture) above, that LPSK will be established in the area that will accommodate mandatangkan legal purposes between fairness, usefulness, and happiness of each witnesses or victims of crime to be, being, or has given testimony at the trial without absence of fear of intimidation or terror of the perpetrators received because of his testimony.

D. Model of Representatives Establishment of Witnesses and Victims Protection Agency (LPSK) in Local Areas To Optimize the Protective Role of LPSK

Some models of the formation of the Agency in the area authors offer include, first, the establishment of LPSK by taking the model as the establishment of the Information Commission. Information Commission organized and run with Act No. 14 Year 2008 on Public Information. Reasons author takes the example of LPSK by the Information Commission is equally Information Commission is an independent agency that serves to execute the law. Running the Information Commission Act No. 14 of 2008 on Public Information, while running LPSK in Act No. 13 of 2006 on the Protection of Witnesses and Victims.

So LPSK in the local area will be formed:

1. LPSK is not only located in the capital of the Republic of Indonesia , but also based on the provincial and / or district / city .
2. LPSK with offices in areas that have high crime rates.
3. LPSK center responsible to the President and to submit a report on the implementation of the functions , duties , and authority to the House of Representatives of the Republic of Indonesia. LPSK responsible to the provincial governor and submit a report on the functions , duties , and authority to the Legislative Council of the province concerned . Agency county / city is

responsible to the regent / mayor and submit a report on the implementation of the functions , duties , and authority to the Legislative Council of the district / city in question.

4. Members of the LPSK in the local areas (province and / or district or city) also consists of 7 (seven) elements derived from professionals who have experience in the field of promotion , fulfillment , protection , law enforcement and human rights , police, prosecutors , Ministry of Justice and Human Rights , academics , lawyers , or non-governmental organizations from the region.
5. Term of office of the Agency area is 5 (five) years. After the term expires , the Agency members area can be re-elected in the same position, only for 1 (one) next term.
6. Administrative support, finance, and governance of the Agency carried out by the secretariat.
7. Secretariat of LPSK carried out by the Government.
8. LPSK's Secretariat headed by a secretary centers established by the Minister of Justice and Human Rights proposed by the Agency , the Agency Secretariat of the province carried out by officials who have the duty and authority in the field of law and human rights at the provincial level is concerned , the Agency Secretariat of the district / city held by the officer who has the task and authority in the field of law and human rights at the district / city in question.
9. Central Budget in LPSK charged to the State Budget , LPSK provincial budgets and / or LPSK county / city charged to Budget Provincial and / or Regional Budget districts / cities.
10. LPSK Members shall be appointed by the President with the approval of Parliament , provincial Agency Members are appointed by the Governor with the approval of the Provincial House of Representatives and / or the Agency Member districts / cities appointed by the Regent / Mayor with the approval of the House of Representatives District / City .

Second, the authors modeled the formation of LPSK by taking the example of such establishment Tiindak Corruption Court (hereinafter referred to as the Corruption Court) defined in Act No. 46 Year 2009 on the Corruption Court. The position of the Corruption Court is a special court within the scope of the General Court, in accordance with the provisions of Article 24A paragraph (3) of 1945 Constitution and Article 15 of Act No. 4 of 2004 on Judicial Power, which requires the establishment of a special court is set by law.

Corruption Court located in every capital of the district / city whose jurisdiction covers the area of law concerned the district court , pursuant to Article 35 paragraph (1) of Act No. 46

Year 2009 on the Corruption Court, for the first time established the Corruption Court in any district court The provincial capital, starting from April 2010 planned Corruption Court established in seven (7) the district court in the provincial capital that is in the District Court of Bandung, Semarang, Surabaya, Medan, Palembang, Samarinda and Makassar. Especially for DKI Jakarta, Corruption Court located in each municipality whose jurisdiction covers the area of the relevant court of law.

The composition consisting of the leadership of the Corruption Court, Judges, and Clerks. Leadership Corruption Court consists of a chairman and a deputy chairman. Chairman of the Corruption Court is responsible for the administration and implementation of the Anti-Corruption Court , and in particular the chairman may delegate the administration of the deputy chairman of the Corruption Court.

In examining, hearing and deciding cases corruption, the Corruption Court, high courts and the Supreme Court consisting of Justices and Judges ad hoc career.

So based on the above explanation, LPSK in the local areas could be formed with models such as the Corruption Court that LPSK based in any capital city / town whose jurisdiction covers the area of the relevant court of law, to protect witnesses or victims. Furthermore, LPSK based in any capital city / town also has a chairman and vice- chairman, and members in the areas of protection; field assistance, compensation, and restitution; field supervision, and research and development reports; areas of cooperation and training; legal dissemination and PR, as well as a secretary.

Third, the authors modeled the formation of LPSK in the local areas because it was inspired by the model of protection of witnesses and victims in Germany. German witness protection program consists of witness protection agency that was formed at the federal level and in each State. The Federal Criminal Police Office is responsible for the protection of witnesses in federal cases and for coordinating the functions of the national and international level, including:

- a. Preparation of an annual report on the witness protection program;
- b. Establishment and implementation of training and continuing education;

- c. Formation of regular conferences involving federal witness protection agency director and state;
- d. Cooperation among states , federal agencies and offices which are abroad;
- e. International cooperation.

Based on the model example of a witness protection program in Germany, the difference in Indonesia is the establishment of LPSK will be established in every area of the provincial in capital high crime rate, then the establishment will be conducted simultaneously. While in Germany, the protection of witnesses or victims of crimes committed by the Federal Police, the Indonesian In witness or victim protection held by each line of people who have experience in the field of promotion, fulfillment, protection, law enforcement and human rights, police, prosecutors, academics, advocate, or non-governmental organizations from the region.

IV. Conclusion and Suggestion

1. The urgency of representatives establishment of LPSK in the local areas formed by the principle of decentralization and 3 based on the legal theory that the purpose of the Ethical Theory emphasizes that the purpose of the law is to create justice, Utilistic Theory which emphasizes that the purpose of the law is to bring benefit or happiness for the greatest number of human, Theory of the Middle Way (mixture) emphasized that the purpose of the law to accommodate between fairness, usefulness, and happiness.
2. Model of representatives establishment of LPSK in local areas takes the examples of the establishment of the Commission on Information residing in each province and/ or district/ city, the establishment of the Corruption Court, and witness or victim protection programs that exists in the Germany.

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Praktek Terbaik Perlindungan Saksi dalam Proses Pidana yang Melibatkan Kejahatan Terorganisir.

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