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The Effectiveness of Witness and Victim Protection Institutions as Non-Structural Institutions

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Abstract

Legal protection is an essential service mandated by the Constitution of the Republic of Indonesia, 1945. Article 28I, paragraph (4), underscores the state's responsibility for the protection, promotion, enforcement, and realization of human rights. In recognition of the importance of safeguarding the community, the Witness and Victim Protection Institution was established under Law Number 31 of 2014 and further defined in Presidential Regulation Number 60 of 2016. The institution's mandate encompasses all stages of the criminal justice process, ensuring that witnesses and victims feel safe when providing testimony. This research employs a normative methodology, involving a review of library documents to analyze legal texts in accordance with applicable principles and standards. The findings indicate that while the Witness and Victim Protection Institution has made significant

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achievements in protecting witnesses and victims in severe cases, its effectiveness as a non-structural institution remains questionable. This is attributed to a lack of regulations governing its management, staffing, oversight, and transparency. To enhance the institution's effectiveness, it is essential to improve regulatory frameworks, increase public awareness, and strengthen its capacity. With these improvements, the Witness and Victim Protection Institution is expected to play a more pivotal role in safeguarding the rights of witnesses and victims, supporting equitable law enforcement, and protecting human rights within Indonesia's criminal justice system.

Keywords

Effectiveness, Legal Protection, Witness and Victim Protection Institutions, Non-Structural Institutions

Introduction

Legal protection is a fundamental service that the government must provide to ensure the security of all citizens. The legal protection of children, in particular, involves not only legal remedies but also the participation of various groups, including social, environmental, and cultural organizations, all working towards a brighter future for children. Several reports highlight the significance of legal protection for children.²

According to the Constitution of the Republic of Indonesia, the state's responsibility to protect human rights is paramount. Article 28I, paragraph (4) of the 1945 Constitution states: "The protection, promotion, enforcement, and realization of human rights is the responsibility of the state, especially the government." For legal protection to be effective, it must encompass the following elements:³

- 1. Government protection for its citizens
- 2. Guarantees of legal certainty

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Mamay Komariah, "Perlindungan Hukum Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban (LPSK)," *Jurnal Ilmiah Galuh Justisi* 3, no. 2 (2015): 229–44.

Rise Karmilia dan Dani Kurniawansyah, "Kebijakan Sistem Pemidanaan Dalam Upaya Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana," Journal of Juridische Analyse 1, no. 01 (2022): 1–13.

Atin Meriati Isnaini dan Lalu Adnan, "Hak warga negara dalam pemenuhan lingkungan tempat tinggal yang layak ditinjau dari perspektif hukum hak asasi manusia," *Jatiswara* 33, no. 1 (2018), http://jatiswara.unram.ac.id/index.php/js/article/view/158.

- 3. Justice for all individuals without discrimination
- 4. Respect for the rights of the people
- 5. Strict punitive measures for violators

The importance of legal protection for the entire community is one of the key reasons for the enactment of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, which was promulgated on October 17, 2014.⁴ This law also establishes the Witness and Victim Protection Institution, which is tasked with providing support and protection to witnesses and victims. The scope of the Witness and Victim Protection Institution encompasses all stages of the criminal justice process, ensuring that witnesses and victims feel safe when providing information.⁵

The explanation accompanying Law Number 31 of 2014 emphasizes that the protection of witnesses and victims within the Indonesian criminal justice process has not been adequately addressed. Articles 50 to 68 of Law Number 8 of 1981 concerning the Criminal Procedure Code primarily focus on protecting defendants from potential human rights violations. Thus, there is a pressing need for the legal protection of witnesses and victims to be clearly defined.⁶

The establishment of this institution is vital, as public sentiment supports the need for protection mechanisms within the justice system. The roles of witnesses and victims in criminal trials are critical; often, a witness's testimony can significantly influence judicial decision-making.⁷

While the Witness and Victim Protection Institution has made notable strides in ensuring the safety of witnesses and victims, its effectiveness is still viewed as suboptimal due to certain regulatory gaps.

Syahrir Kuba, "Optimalisasi Perlindungan Saksi dan Korban Dalam Rangka Memantapkan Penegakan Hukum Di Indonesia," *Jurnal Kajian Ilmiah* 22, no. 1 (2022): 89–100.

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Ida Kristiana, "Perlindungan Hukum Terhadap Whistleblower dalam Kebijakan Hukum Pidana (Studi Atas Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban)" (PhD Thesis, Universitas Islam Indonesia, 2016).

Agus Mustafa, "Peran Penegak Hukum Dalam Upaya Pelaksanaan Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang Di Indonesia" (PhD Thesis, Universitas Islam Sultan Agung Semarang, 2023).

Halomoan Freddy Sitinjak Alexandra, "Rekonstruksi Regulasi Perlindungan Saksi dan Korban Tindak Pidana Dalam Pemberian Restitusi dan Kompensasi Berbasis Keadilan" (PhD Thesis, Semarang, Universitas Islam Sultan Agung (Indonesia), 2021).

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The law does not comprehensively outline the duties and authorities of the institution, focusing instead on its responsibilities, selection and membership processes, decision-making, and funding, without specifically addressing aspects such as organizational structure, management, staffing, oversight, transparency, and accountability.⁸

This lack of clarity has led to numerous public inquiries regarding the institution's mechanisms for guaranteeing witness and victim protection, its position within the criminal justice system, and whether it genuinely protects individuals in compliance with established procedures, or if it prioritizes the interests of certain parties over others.⁹

Method

This legal research employs a normative method, which involves reviewing library documents to analyze legal texts in reference to applicable legal principles and standards. A method serves as a means to identify, formulate, and analyze specific problems in order to uncover truths; it essentially provides guidelines for how researchers learn, analyze, and comprehend their subject matter.¹⁰

The data utilized in this legal research includes both primary and secondary sources. Primary sources comprise key legal documents such as the 1945 Constitution of the Republic of Indonesia, Law No. 31 of 2014 concerning the Protection of Witnesses and Victims, and Law No. 39 of 1999 concerning Human Rights. Secondary sources include various laws, books, documents, and journals relevant to the research topic.¹¹

Ariya Satria, Mulyati Pawennei, dan Ilham Abbas, "Perlindungan Hukum Terhadap Saksi Dalam Tindak Pidana Korupsi," *Journal of Lex Generalis (JLG)* 3, no. 5 (2022): 1036–52.

Anisa Roshda Diana, "Tinjauan Hukum Pidana Terhadap Peranan Lembaga Perlindungan Saksi Dan Korban Melindungi Whishterblower (Peniup Peluit) Dengan Justice Collabolator (Pelapor Pelaku) Dalam Kasus Tindak Pidana Korupsi Ditinjau Dari Undang-Undang Nomor 13 Tahun 2006 Tentan," 2012.

Jonaedi Efendi dan Johnny Ibrahim, "Metode Penelitian Hukum: Normatif dan Empiris," 2018.

Adam Prima Mahendra, "Mediasi Penal Pada Tahap Penyidikan Berlandaskan Keadilan Restoratif" (PhD Thesis, Universitas Airlangga, 2020), https://repository.unair.ac.id/95541/.

Data collection is conducted through a literature study. The author employs qualitative analysis to interpret the collected data, organizing and categorizing it into patterns and descriptions. This process facilitates the identification of themes and allows for the drawing of conclusions. Subsequently, these findings will be used to normatively evaluate the effectiveness of the role of the Witness and Victim Protection Institution in safeguarding witnesses of gratuity crimes, utilizing descriptive analytical methods.¹²

Results and Discussion

1. The Effectiveness of the Role of Witness and Victim Protection Institutions as Non-Structural Institutions

The reforms of the 1945 Constitution during the reform era involved not only changes in provisions, policies, and articles but also significant advancements in human rights protection. Various areas, such as child protection, women's rights, and domestic violence, have been clearly regulated by law. However, witness protection has been largely overlooked in this reform agenda.¹³

These structural changes have transformed several state institutions, yet this information is not widely known among the public. The constitutional amendments made by the People's Consultative Assembly between 1999 and 2002 resulted in substantial changes, occurring over four distinct amendments. These reforms altered the status, position, relationships, and existence of state institutions within the constitutional framework of the Republic of Indonesia.¹⁴

Efforts to improve governance and public services necessitate the presence of supervisory institutions capable of effectively overseeing the responsibilities of state administrators. External supervisory bodies are essential for strengthening government oversight mechanisms,

Saputra Adiwijaya dkk., Buku Ajar Metode Penelitian Kualitatif (PT. Sonpedia Publishing Indonesia, 2024).

¹³ Muhammad Amin Putra, "Eksistensi lembaga negara dalam penegakan Hak Asasi Manusia di Indonesia," *FLAT JUSTISIA: Jurnal Ilmu Hukum* 9, no. 3 (2015), http://jurnal.fh.unila.ac.id/index.php/fiat/article/view/600.

¹⁴ Sri Nur Hari Susanto, "Pergeseran Kekuasaan Lembaga Negara Pasca Amandemen UUD 1945," *Masalah-Masalah Hukum* 43, no. 2 (2014): 279–88.

thereby fostering a clean, transparent, and responsive bureaucracy that meets public needs.¹⁵

Non-Structural Institutions (NSIs) are quasi-governmental organizations that emerged alongside the reform era, which ushered in a new wave of democracy in the nation. Initially, various terms were used to describe these institutions, including Independent Institutions and Extra-Structural Institutions, with their forms ranging from commissions and committees to bodies and teams. NSIs are established through specific laws and regulations to support the functions of the state and government, involving elements from the public sector, private sector, and civil society, and are financed by the state budget.¹⁶

Despite the diversity in naming and form, NSIs generally operate independently of state ministries, non-ministerial government agencies, and other governmental bodies. To date, no comprehensive regulation governs NSIs, leading to significant variation in their structure and function. However, several common patterns can be identified within NSIs:¹⁷

- a. NSIs composed of officials from ministries or government organizations, recognized by the President, tasked with coordinating and implementing specific programs across government entities.
- b. NSIs comprising members from the public, private sector, and government. These institutions provide advisory and policy recommendations to the President.
- c. NSIs that include experts or professionals with specialized knowledge. Such institutions are selective in their membership, focusing on executing urgent government tasks with technical expertise.

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Alqhiffari Visal Fuadi, "Fungsi Inspektif Ombudsman Republik Indonesia Perwakilan Aceh Terhadap Bank Syariah Indonesia Kota Banda Aceh" (PhD Thesis, UIN Ar-raniry, 2024), https://repository.ar-raniry.ac.id/id/eprint/36217/.

Muslim Kasim, Andi Pangerang Moenta, dan Ahmad Ruslan, "Penataan Lembaga Non Struktural Dalam Rangka Efektivitas Penyelenggaraan Pemerintahan Di Indonesia," *Jurnal Ilmu Hukum* 8, no. 1 (2019): 1–19.

Y. Hartono, "Urgensi Lembaga Non Struktural Dalam Mewujudkan Good Governance," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2017–32.

As described by Rhodes, these institutions serve as intermediaries with three primary roles:¹⁸

- 1) Managing tasks assigned by the central government by coordinating activities among various agencies.
- 2) Monitoring and facilitating the implementation of central government policies.
- 3) Representing regional interests in dealings with the central government.

Protection is a crucial service that law enforcement officials must provide to ensure both physical and mental security for witnesses and victims against threats, terror, or violence from perpetrators of criminal acts. Every citizen has the right to such protection. According to Article 1, point 6 of Law No. 31 of 2014 concerning the Protection of Witnesses and Victims, protection encompasses all efforts to uphold rights and provide support that fosters a sense of security for witnesses and victims. This protection must be carried out by the Witness and Victim Protection Institution or other designated organizations in accordance with the law.¹⁹

Protection can be offered at various stages of the criminal justice process, including investigation, prosecution, and court proceedings. This protection may be initiated by law enforcement officials or requested by the victims themselves. The Witness and Victim Protection Institution aims to ensure that witnesses and victims feel secure, and it has implemented measures to enhance this sense of safety. Additionally, victims may receive legal protections such as compensation, coverage of costs, and rehabilitation, as outlined in Government Regulation No. 44 of 2008.²⁰

Unfortunately, the safety of witnesses and victims is often overlooked, with their well-being and that of their families jeopardized

Fiona Florencia Fevernova dan Hery Firmansyah, "Tinjauan Peran LPSK dalam Proses Penegakan Keadilan Terhadap Korban Inses," *Unes Law Review* 6, no. 2 (2023): 4235–42.

Khudzaifah Dimyati, Bambang Setiaji, dan Kelik Wardiono, "Hukum dan lembaga Filantropi: Tawaran Konsep Pemberdayaan Ekonomi Masyarakat Berbasis Profetik" (PhD Thesis, Universitas Muhammadiyah Surakarta, 2023).

Dwi Prasetyo dan Ratna Herawati, "Tinjauan Sistem Peradilan Pidana Dalam Konteks Penegakan Hukum dan Perlindungan Hak Asasi Manusia Terhadap Tersangka di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 4, no. 3 (2022): 402–17.

due to the testimonies they provide. The Criminal Code tends to prioritize protections for suspects and defendants over those for witnesses and victims. However, in 2003, the government's commitment to protecting witnesses and victims began to emerge, though only in specific cases, such as in the 2003 regulations concerning the protection of witnesses, investigators, public prosecutors, and judges in terrorism cases. This was followed by Government Regulation No. 57 of 2003 regarding special protection procedures for whistleblowers and witnesses in money laundering cases. It wasn't until 2014 that the government enacted Law No. 31 of 2014 concerning the Protection of Witnesses and Victims, which came into effect on October 17, 2014.²¹

The role of witnesses and victims is essential for upholding human rights. While numerous laws exist to protect vulnerable groups—such as children and women—the issue of witness protection has often been neglected in the reform agenda. The establishment of Law No. 13 of 2006, amended by Law No. 31 of 2014, represents a significant step in addressing the needs of crime victims. This legislation aims to empower victims and support their roles in achieving a fair and effective criminal justice process, ensuring they receive necessary protection and assistance.²²

The protection of witnesses and victims is grounded in principles outlined in Article 3 of Law No. 31 of 2014, which include respect for dignity, security, justice, non-discrimination, and legality. To qualify for protection from the Witness and Victim Protection Institution, witnesses and victims must meet certain criteria set forth in Articles 28-36 of the same law. Specifically, Article 28 states that protection and assistance are determined based on:

1. The nature and significance of the testimony provided by the witness or victim;

Qothrunnada Lubis dan Rizky Sharfina, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Pada Tahap Penuntutan Di Kejaksaan Negeri Jambi" (PhD Thesis, Hukum Pidana, 2024).

Dimas Irfan Maulana dan Is Fadhilah, "Peran Pemerintah Dalam Upaya Perlindungan Anak Dari Kekerasan Seksual Di Wilayah Kota Surabaya: Studi Kasus Pada Dinas Pemberdayaan Perempuan dan Perlindungan Anak serta Pengendalian Penduduk dan Keluarga Berencana Kota Surabaya," Neraca: Jurnal Ekonomi, Manajemen dan Akuntansi 2, no. 9 (2024): 404–18.

- 2. The degree of threat posed to the witness or victim;
- 3. An analysis conducted by medical or psychological professionals regarding the witness or victim;
- 4. The criminal history of the witness or victim.

The authority granted to the Witness and Victim Protection Institution, as outlined in the law, includes several key responsibilities. This independent entity is based in the capital of the Republic of Indonesia and has the capability to establish regional offices as needed. The institution is tasked with providing protection and assistance to witnesses and victims, reporting directly to the President, and submitting periodic reports on its activities to the House of Representatives at least once a year. Membership consists of seven professionals with expertise in law, human rights, and academia, appointed by the President with the House of Representatives' approval for a five-year term, which may be renewed once. The structure includes a Chairperson (who also serves as Vice Chair) and other members.

According to Article 28, every witness or victim may obtain legal protection from the Witness and Victim Protection Institution if specific conditions are met. This includes the importance of the information provided during trial proceedings and any external threats that could jeopardize the lives of witnesses or victims, as well as their families. The institution is obligated to provide comprehensive protection to witnesses and victims, including their families, once a statement of willingness has been signed. The procedures for protection are detailed in Article 29 of Law No. 31 of 2014, which specifies that the witness or victim, or an authorized official on their behalf, must submit a written application to the institution. The institution will promptly review this application and issue a written decision within seven days.

Requests for protection can originate from witnesses or victims, their authorized representatives, family members, and companions. For minor victims or witnesses, parents or guardians must file the request. The Witness and Victim Protection Institution has adopted Regulation No. 6 of 2010, governing the application process. According to Article 9, applications for protection must be submitted to the Head of the institution through a letter or request from an authorized official. The Head will then request a review of the application. Upon receiving a

complete protection application, the institution can coordinate with relevant agencies. Additionally, it may request further data or information related to the case, such as examination protocols, the significance of the testimony, and summons from the police or court.

Article 30(1) of Law No. 31 of 2014 states that if the Witness and Victim Protection Institution accepts a request, the witness or victim must sign a statement of willingness to comply with the terms of protection. These terms include a commitment to testify in judicial proceedings, adherence to safety regulations, refraining from unauthorized contact while under protection, keeping their location confidential, and fulfilling any other conditions deemed necessary by the institution. The application process for protection can often confuse witnesses and victims, as it involves navigating a lengthy procedure before protection is granted.

Witnesses and victims often hesitate to seek protection from the Witness and Victim Protection Institution due to a lack of understanding of the procedures involved. This challenge is particularly pronounced for those unfamiliar with legal processes, highlighting the crucial role that legal counsel can play in assisting them. Under the current protection framework, many witnesses and victims do not feel entirely safe, which contributes to their reluctance to come forward.

The Witness and Victim Protection Institution was established under Law Number 31 of 2014, aimed at providing necessary protection and assistance to witnesses and victims as outlined in the law. However, legal protections for these individuals have primarily relied on the Criminal Code, which often prioritizes the rights of suspects over those of witnesses and victims. As a result, the position of witnesses and victims appears less favorable compared to that of perpetrators. Despite the enactment of Law 31 of 2014, the protection offered remains insufficient, which hampers the institution's effectiveness in fulfilling its mandate.

The limitations of the Witness and Victim Protection Law can lead to mistakes in the institution's operations, further complicating the situations of witnesses and victims. While the responsibilities assigned to the institution may seem adequate, a closer examination reveals that its authority is still lacking, particularly regarding the support systems available for witnesses and victims. Articles 33 to 36 of the law outline

assistance procedures but fail to specify that the institution must obtain approval from witnesses or victims before providing assistance.

Moreover, the law does not adequately address how law enforcement officials are to guarantee the protection of witnesses, victims, and prosecutors, leaving these individuals to fend for themselves and their families. A significant barrier to the effectiveness of the institution is the lack of public awareness and socialization about its existence and services. Many potential witnesses and victims are unaware of the protections available to them.

To enhance public understanding, the Witness and Victim Protection Institution must improve its outreach efforts. Restoring public trust is essential, and the institution should focus on addressing its weaknesses and limitations. The various shortcomings within the current framework indicate that the institution's effectiveness in protecting witnesses and victims will not improve without necessary amendments to the Law on the Protection of Witnesses and Victims.

2. Efforts to Enhance the Effectiveness of the Witness and Victim Protection Institution

The Witness and Victim Protection Institution plays a crucial role in safeguarding witnesses and victims of crime in Indonesia. Recognizing the importance of legal protection for all citizens, the government established Law No. 31 of 2014, which outlines the rights and support that must be provided to witnesses and victims. This law mandates that The Witness and Victim Protection Institution ensures the fulfillment of these rights, emphasizing both material compensation for losses and support for the psychological well-being of victims.

Despite its mandate, law enforcement practices frequently undermine these principles. Issues such as coercion of suspects for confessions, intimidation, case manipulation, extortion, and other forms of misconduct often occur. Victims also report feeling marginalized, facing weak charges against perpetrators, being uninformed about case progress, and lacking compensation and other essential rights. Additionally, witnesses, who are critical in revealing the truth behind criminal acts, often face similar neglect.

The Witness and Victim Protection Institution encounters several challenges that hinder the effectiveness of its operations. A significant barrier is the public's limited understanding of the institution's existence and functions. Many potential witnesses and victims are unaware of their right to seek protection, leaving them feeling threatened and insecure when providing testimony. Furthermore, the Indonesian legal system tends to prioritize the rights of suspects and defendants over those of witnesses and victims. Although Law No. 31 of 2014 is in place, its implementation remains suboptimal. The Criminal Procedure Code continues to offer greater protections to suspects, leaving witnesses and victims with inadequate safeguards.

Effective coordination between The Witness and Victim Protection Institution and law enforcement agencies is also lacking. Unclear roles and responsibilities often result in slow responses to protection requests from witnesses and victims. Additionally, The Witness and Victim Protection Institution faces challenges related to insufficient human resources and budget constraints, which delay the processing of protection applications.

To address these challenges, The Witness and Victim Protection Institution should enhance its outreach and education efforts to raise public awareness about the services it offers. Launching comprehensive information campaigns through mass and social media can inform witnesses and victims about their rights. Collaborating with non-governmental organizations and local communities will further facilitate the dissemination of information and provide additional support.

Improving coordination between The Witness and Victim Protection Institution and law enforcement officials is crucial for increasing the effectiveness of witness and victim protection. Establishing memoranda of understanding or cooperation agreements with police, prosecutors, and courts will clarify roles and responsibilities, leading to faster and more efficient protection processes. Additionally, The Witness and Victim Protection Institution must invest in training and education for its personnel, equipping them to handle various situations faced by witnesses and victims, including physical and psychological threats.

Increased funding is essential to ensure The Witness and Victim Protection Institution has the necessary resources to fulfill its responsibilities effectively. The government should also consider revising the Law on the Protection of Witnesses and Victims to address existing weaknesses. This revision should clarify mechanisms for

support and assistance, enhance sanctions against those threatening witnesses and victims, and streamline administrative procedures to avoid burdensome bureaucratic processes.

By implementing these measures, The Witness and Victim Protection Institution can enhance its effectiveness in protecting witnesses and victims. Adequate protection will encourage more individuals to come forward and report crimes, ultimately strengthening law enforcement. The successful protection of witnesses and victims will contribute to the establishment of a fairer and more transparent justice system in Indonesia.

Conclusion

The effectiveness of the role of the Witness and Victim Protection Institution as a non-structural institution in Indonesia is crucial for ensuring the safety and rights of witnesses and victims of crime. Formed under Law Number 31 of 2014, the Witness and Victim Protection Institution has the primary task of providing physical and psychological protection, as well as legal support to witnesses and victims. This coverage includes compensation, rehabilitation, and other forms of assistance. However, the role of the Witness and Victim Protection Institution is often hampered by various obstacles, including a lack of public understanding of its existence and the complexity of protection procedures that make witnesses and victims reluctant to seek help. To enhance its effectiveness, the Witness and Victim Protection Institution needs to conduct intensive socialization efforts to raise public awareness of their rights and the available services. Strengthening coordination with law enforcement officials through the signing of a clear memorandum of understanding or cooperation agreement is essential. Additionally, prioritizing the enhancement of human resources and budget allocations is crucial to ensure timely and effective services. The government also needs to revise the Witness and Victim Protection Law to address existing weaknesses, clarify the mechanisms for providing support and sanctions for violations, and simplify administrative procedures to make them more accessible to witnesses and victims.

The Witness and Victim Protection Institution plays a vital role in ensuring the safety of witnesses and victims of crime in Indonesia, in accordance with Law No. 31 of 2014. Nevertheless, the implementation of protection still faces several challenges. The main issues include a lack of public understanding of the role of the Witness and Victim Protection Institution, an imbalance in the legal system that prioritizes the rights of suspects over those of witnesses and victims, and in coordination with law difficulties enforcement Furthermore, the Witness and Victim Protection Institution lacks adequate human resources and budgetary support, hindering the speed and effectiveness of its protection efforts. To improve effectiveness, the Witness and Victim Protection Institution must strengthen public education through intensive information campaigns. Collaboration with non-governmental organizations and local communities is also vital for spreading information and providing support. Enhanced coordination with law enforcement officials through a memorandum understanding can clarify roles and responsibilities, thereby expediting the process of applying for protection.

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