

Legal protection for reporting witnesses in matters of narcotics and psychotropics

Arif Budi Setiawan

Fakultas Hukum, Universitas Brawijaya, Malang, Indonesia

Article Info

Article history:

Received : 12 Mar, 2022

Revised : 11 Apr, 2022

Accepted : 13 July, 2022

Keywords:

Narcotics;
Legal Protection;
Psychotropic Drugs;
Reporting Witness.

ABSTRACT

In writing this thesis, the writer discusses the issue of Legal Protection for Reporting Witnesses in the matter of Narcotics and Psychotropics. As an effort to find out the form of legal protection provided by the Police to reporting witnesses and to find out the methods and capabilities of law enforcement officials or the police in providing protection in accordance with Law No. 22 of 1997 and Health Law No. 23 of 1992 and provide an explanation of the rule of law and side effects Narcotics and psychotropics, as well as legal sanctions for reporting witnesses who know about the crime of Narcotics but do not report and legal sanctions for officers who do not shoot reporting reports. So the approach method used is sociological juridical, studying the applicable legal provisions and the reality that occurs in practice. Then all existing data were analyzed descriptively qualitatively. Based on the research, the authors get answers to existing problems that legal protection for witnesses means providing protection for witnesses to be protected by legal instruments. The form of legal protection provided by the police is in the form of embezzlement of the identity of the complainant and not presenting witnesses in court. Efforts made by the police in providing legal protection for reporters of Narcotics and Psychotropics problems are by providing training to police officers on the operandi and distribution system of Narcotics and the types of Narcotics and the side effects they cause. Meanwhile, legal sanctions for reporters who know but do not report will be subject to legal sanctions Article 65 Law No. 5 of 1997 and for officers who do not shoot the witness' report can be subject to administrative sanctions in the form of a warning, scoring or transfer to police officers who do not announce the reporting report.

This is an open access article under the [CC BY-NC](#) license.



Corresponding Author:

Arif Budi Setiawan
Fakultas Hukum, Universitas Brawijaya
Jl. MT. Haryono No.169, Ketawanggede, Kec. Lowokwaru, Kota Malang, Indonesia
Email: arifbudi@fhbrawijaya.co.id

1. INTRODUCTION

Modernization and industrialization is a process that cannot be avoided, in which advances in technology and science are the backbone. But keep in mind that modernization, industrialization and the use of science and technology will have an impact on human life in all aspects. This impact will affect humans with different levels of adjustment, so that it can cause tension or stress in humans. The police as law enforcement officers are expected to be able to eradicate this crime because this problem is not a stand-alone problem. But it concerns various areas of life, including security, health

and socio-economic, which not only have a negative impact on individuals, but on families, communities, nations and countries.

Of the several narcotics cases that have been handled by the Kediri POLRES regional police, there are rarely any reports from members of the public participating in providing information about the crime of trafficking and use of narcotics and illegal drugs. If there is a report, the witness is usually immediately taken over by the police and the police keep the identity of the reporter secret so that the suspect does not know who reported it because it involves danger and threats to the reporter. It is usually the suspect himself who is used as a witness by the police. The police only provide legal protection based on existing provisions, namely Law no. 22 of 1997 concerning narcotics.

Mitigation and prevention must be carried out with high priority and integrated. Legal action needs to be taken in a maximum and severe manner, so that violators become deterrent and will not repeat it again or at least serve as an example for others not to act. This requires observers of the dangers of narcotics and psychotropics as well as drug abuse among adolescents in particular and society in general in a correct, complete, integrated, planned, sustainable and decisive action indiscriminately for offenders of this narcotics and psychotropic abuse.

To provide legal protection for members of the public who help provide reports about a crime to the police, the government has made a form of a draft law on legal protection for witnesses regarding their threatening offenses which has been legalized as a form of legislation in Indonesia. According to WJS Poerwadarminto in the Big Indonesian Dictionary, protection is all efforts made to protect the subject. If it is associated with reporting witnesses in narcotics and psychotropic problems, protection can be interpreted as all efforts made by related elements in the criminal justice process (in this case law enforcement officials).

Apart from that, the enactment of the Law on the Protection of Witnesses, which will be promulgated, can be useful for upholding the rule of law in Indonesia, if it is followed by good performance from the police or investigators in carrying out the legal rules that apply in the territory of the Republic of Indonesia while continuing to carry out a form of the legal principle, namely "presumption of innocence" (everyone who is suspected, arrested, detained, or presented before a court hearing must be considered innocent until a court decision states his guilt and obtains permanent legal force before the court). This legal procedure must also be based on applicable law, namely the Criminal Procedure Code (KUHAP) Law No. 8 of 1981.

Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain and can cause a sense of dependence, which are differentiated into groups as attached in this law or which is then determined by ministerial decree.

2. METHOD

In this study, the method used is sociological juridical. namely research conducted on real conditions in society with the intent and purpose of finding facts, then proceed with finding problems, then leading to the identity of the problem and ultimately leading to problem solving. Here the author tries to examine the applicable legal provisions and the reality that occurs in practice. The juridical approach here is aimed at analyzing the law that regulates the object being investigated by researchers, in this case regarding the protection of reporting witnesses in narcotics and psychotropic matters.

Primary data, namely data obtained directly from the source, this data is obtained from the results of interviews with respondents, namely the police who have handled them. Interview is the process of obtaining information for research purposes by holding direct question and answer. This interview was conducted orally with the respondent, namely with Aiptu Trilaksana, investigators from the narcotics division and IPTU Ridwan Sahara, Head of the Reskoba Unit, POLRES Kediri. Secondary data, namely data obtained from a documentation study on legal protection for reporting witnesses at the Kediri POLRES.

Data Collection Techniques Primary data was collected by conducting direct interviews with officers in the Kediri Police Narcotics Unit, namely by conducting interviews. The forms of interviews are carried out freely guided, namely by preparing questions as a guide in advance but it is still possible to have variations of questions that are adapted to the situation during the interview. Secondary data was collected by carrying out documentation, namely recording or copying data,

reference books, laws and regulations, scientific journals and reports from the Kediri POLRES on the Narcotics Unit.

Data Analysis Techniques. The data analysis technique used is "descriptive qualitative", that is, after the data is obtained and collected, the next step is to analyze the data, which provides an overview of the facts and then describes them in more detail. The result is data that is accurate and can be accounted for and some conclusions can be drawn as the final result.

3. RESULTS AND DISCUSSION

3.1 Definition of Legal Protection for Witnesses

Protection is all efforts made to protect the subject. It can also be interpreted as a place of refuge from anything that threatens. If this is related to the reporting witness in the case of narcotics and psychotropics, then protection can be interpreted as all efforts made by related elements in the criminal justice process (in this case law enforcement officials). So that the reporting witness as a protected object feels safe.

Legal protection for witnesses has a very close relationship with human rights. The police as law enforcement officers must have the courage to bear this legal protection by providing members of the public with a sense of security, this is explained in the provisions of the main police law, Law no. 2 of 2002 and the Law on Human Rights (HAM) Law no. 3 of 1999 which, among other things, can be stated that humans basically have the right to feel safe in their life and work in meeting their needs as long as this does not conflict with written legal rules and unwritten legal rules in social life.

3.2 Definition of Witness

3.2.1 Definition of Witness Statement

Witness testimony is one of the legal means of evidence in the settlement of criminal acts, including narcotics crimes. Here will be explained in advance about the testimony of witnesses as evidence that is considered valid. According to article 1 point 26 of the Criminal Procedure Code, what is meant by a witness is "a person who can provide information for the purposes of investigation, prosecution and trial regarding a case that he heard, saw, and experienced himself". Whereas witness testimony according to Article 1 point 27 of the Criminal Procedure Code is "one of the pieces of evidence in a criminal case in the form of a witness statement regarding a criminal event that he himself heard, saw, and experienced himself by stating the reasons from his knowledge". From this description it can be drawn the difference between witnesses and witness statements,

From the description above it is very clear that evidence is the most important and main tool in proving a criminal case, so that being a witness is a legal obligation for everyone who sees, hears or experiences a criminal incident. If a person has been asked to be a witness by a court but that person for no apparent reason refuses to be a witness then that person will be summoned once again accompanied by an order to take him/her by the police officer, meaning that if necessary by force and this kind of witness can be determined to have violated Article 216 Criminal Code. If a witness at trial does not want to testify, then that person violates Article 224 or 522 of the Criminal Code (on testimony before a judge). What did he see himself; What did he hear himself; What did he experience himself.

So what must be explained by the witness are facts relating to the actions committed by a defendant. In short, a witness may not conclude or give an opinion on what he saw, heard or experienced. This requirement is regulated in Article 185 (5) of the Criminal Procedure Code which reads: "Either an opinion or a conjecture that is derived from thoughts alone is not a witness statement".

3.2.2 The conditions of a witness

Basically, anyone who sees, hears or experiences an event related to a crime can become a witness" (article 1 point 26 of the Criminal Procedure Code). Also article 108 paragraph (1) of the Criminal Procedure Code explains: "Every person who experiences, sees, witnesses and/or becomes a victim of an event which constitutes a crime has the right to submit a report or complaint to investigators, both orally and in writing."

Being a witness before a court session is one of the legal obligations of every person. If there is a person who becomes a witness after being summoned at a court hearing to provide information, but the person refuses this obligation, then that person can be subject to criminal sanctions based on the provisions of the applicable law (explanation Article 159 paragraph (2) of the Criminal Procedure Code).

In order for the trial to obtain objective witness testimony in the sense that it is impartial or detrimental to the defendant, the Criminal Procedure Code divides into 3 (three) categories of exceptions to be witnesses, namely:

a. People who can withdraw as witnesses.

To find out more clearly about people who can resign as witnesses before a court hearing, you can see the provisions of Article 168 of the Criminal Procedure Code,

- 1) Blood relatives or relatives in a straight line up or down to the third degree of the accused.
- 2) Relatives of the defendant or co-defendant, mother's or father's siblings, also those who are related by marriage to the children of the defendant's relatives up to the third degree.
- 3) The husband or wife of the defendant even though they are divorced or are together as defendants.

However, the provisions of Article 168 of the Criminal Procedure Code can be sidelined by referring to Article 169 of the Criminal Procedure Code which states:

- 1) In this case, those referred to in Article 168 of the Criminal Procedure Code want the public prosecutor and the defendant expressly agree that they can give under oath.
- 2) Without the approval referred to in paragraph (1), they are allowed to give statements without an oath.

Observing the contents of Article 169 paragraph (1) of the Criminal Procedure Code above, there is the word "want" which has meaning if a person referred to in Article 169 of the Criminal Procedure Code does not object to being a witness at a trial court, provided that he obtains express approval from the public prosecutor or the accused jointly. The same. However, according to paragraph (2) of Article 169 of the Criminal Procedure Code, they are still permitted to give their testimony in court even though there is no consent from the parties concerned but the value of the statement is only as an indication because the statement was given without prior oath.

b. People who can ask for release to be witnesses

To find out the people who can ask to be released as witnesses, see article 170 of the Criminal Procedure Code which says:

- 1) Those who because of their work or their dignity or position are required to keep secrets, may ask to be released from the obligation to provide testimony as witnesses, namely regarding matters entrusted to them.
- 2) The judge determines whether or not all the reasons for the request.

Groups of people who are prohibited from being witnesses but whose statements are still heard without an oath are children under 15 years of age and who are not married, people who are mentally ill or mentally ill, although sometimes their memory is good again, they are absolutely exempt from the obligation to be witnesses but are freed to give testimony. without oath.

3.2.3 Content and Value of a Witness' Statement

Not all information given by a witness always has evidence, Article 185 paragraph (5) of the Criminal Procedure Code states that both opinions and fictions obtained from ideas alone are not witness statements. In the elucidation of Article 185 paragraph (1) it says: "According to the testimony of witnesses, it does not include information obtained from other people or testimonium de auditu. Thus, testimony from witnesses obtained from other people is not valid evidence. Such information is in the form of witness statements heard from other people who tell something, or what in the science of criminal procedure law is called testimonium de auditu or hearsay evidence.

3.2.4 Legal Protection Provided to Reporting Witnesses in Narcotics and Psychotropic Matters

In the provisions of the rule of law it is determined that a witness according to Article 184 of the Criminal Procedure Code is one of the other means of evidence, a witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a case that he has heard, seen and experienced himself, so juridically he must his statement can be guaranteed to be true from what he has seen, heard, and experienced himself. In order to create this, his security must be guaranteed from various threats and terror aimed at him, both his family and his property, his security must be guaranteed. A witness who knows about a criminal act that is in progress or when it is about to be committed must report it to the authorities, but if the witness testimony provided turns out to be false and cannot be proven true and can prove the material truth of a crime, then the party will automatically The police must be able to guarantee their security by monitoring every work

and activity carried out by witnesses in their daily lives with the hope that the witnesses themselves and their families as well as the assets of the work carried out on a daily basis can feel safe under control.

3.2.5 Obstacles faced by police officers in providing protection.

Efforts that will be made by officers in dealing with obstacles that arise in this task are: Growing a sense of awareness from the community to be immediately responsive to the surrounding conditions related to the abuse of narcotics and illegal drugs, namely by providing outreach/counseling to members of the public about the dangers of circulation and the effects from the use of narcotics and psychotropics, which had been carried out by the Kediri POLRES apparatus namely providing outreach to students on new teachings, instill a sense of trust in the public not to be afraid to report things that happen, namely by providing knowledge to the public that members of the public who participate in assisting the police in providing information about the circulation of narcotics and psychotropics will be protected and the police will keep the identity of the reporter secret. Improving the supervisory system, namely by cultivating even better cooperation with the community and increasing the quality of the officers' abilities and increasing the quantity of officers in the field through education and training, namely by cultivating better cooperation with the community as well as increasing the quality of officers' abilities and increasing the quantity of officers in the field through education and training, namely by cultivating better cooperation with the community as well as increasing the quality of officers' abilities and increasing the quantity of officers in the field through education and training.

Table 1. Data on Drug Suspects and Evidence for 2005

No	Month	Case	Suspect	BB		Methamphetamine/Marijuana
				Double L	Lexotan	
1	January	3	6	2606	81	-
2	February	3	3	40	14	1 Ss Pocket
3	March	5	6	190	49	1 Ss Pocket
4	April	4	6	813	107	-
5	May	3	7	512	-	-
6	June	-	-	-	-	-
7	July	6	8	3350	5	-
8	August	6	10	1114	101	-
9	September	7	10	653	-	-
10	October	12	13	345	64	-
11	November	19	24	6478	87	-
12	December	8	14	2165	374	1 Ss Pocket
Amount		76	108	18409	1152	69.50 Mg Cannabis 3 Ss Pockets 69.50 Mg Cannabis

Data source: Kediri Police, May 2006

From the table above it can be seen that there are cases of abuse of narcotics and psychotropic substances in the Kediri district almost every month. The circulation capacity is very large, as seen in 2005, the highest number of cases occurred in November and October, because in those months the police carried out a special operation which coincided with the month of Ramadan with the aim that Muslims would not be disturbed in carrying out their fasting and could carry out their worship safely. solemn. In October there were 12 cases with 13 suspects with 653 Double L as evidence and in November with 19 cases with 24 suspects with 6478 Double L as evidence and 87 in Lexotan.

Table 2. Data on Drug Suspects and Evidence for 2006

No	Month	Case	Suspect	Bb		Methamphetamine/Marijuana
				Double L	Lexotan	
1	January	8	13	2160	225	-
2	February	10	11	745	220	-
3	March	11	12	1105	108	-
4	April	17	29	10164	99	-
Amount		46	65	14174	652	-

Data source: Kediri Police, May 2006

From table 2 above the highest number of cases occurred in April with a total of 17 cases with 29 suspects and evidence in the form of 10164 Double L and 99 Lexotan items. Special operations

were also held after/after the New Year, namely in January 2006 there were 8 cases with 13 suspects and 2160 items of evidence in the form of Double L and 225 items of Lexotan.

Most of what drug dealers distribute are psychotropics of the Double L (LL) type and Lexotan because the prices are relatively cheap, only over ten thousand, except for Ecstasy/meth, which is relatively more expensive than Double L and Lexotan, which is only around one hundred thousand.

3.2.6 Legal Sanctions for Reporting Witnesses If They Know But Do Not Report and Law Enforcement Sanctions for Failure to Follow Up on Reports.

From what has become the responsibility and obligation of the police in providing protection and security oversight for the community, this is a task that must be carried out by the ranks of the police, this is because in providing a sense of security to the community it must always be supported by good performance between the law enforcement officers themselves, if this can really be realized properly and the participation of community members in providing information to the police on any problems that arise in the community. In order to make the duties of the police more proportional, the ranks of the police give rights to every member of the public who has good faith in police duties.

Apart from that, the Indonesian state is a state of law (*rechtstaat*) and not a state of power (*machtstaat*), so it is only natural that any actions or actions that violate written or unwritten legal provisions for anyone who commits them must receive sanctions in accordance with the applicable legal rules. The law was made with the aim of being able to create a balance in social life, so that it will not cause problems that can disturb the lives of community members. In order to optimize the function of the law in the life of the nation and state, the law must be implemented without any legal discrimination in the sense that all people have the same position before the law without discrimination.

If members of the public have good faith in providing information about the existence of a crime regarding the circulation and use of narcotics and illegal drugs, it can be reported while still being guided by existing legal procedures, namely: stating the name, address, crime and location of the place the occurrence of a crime took place, but the police have not been able to provide further action considering the lack of legitimacy of the information that has been reported. If a report from the public regarding a criminal act that is in progress or is in the process of committing it is not followed up by a member of the police, then one member of the police who does not follow up on the report can be reported to the Head or Commander of the said police unit and may be subject to administrative sanctions. in the form of a warning, temporary deactivation of assignments or transfer.

4. CONCLUSION

Based on the description in the discussion chapter above, in order to facilitate understanding, in this chapter the researcher puts forward several conclusions, namely: The police provide protection for reporting witnesses by obscuring identity. And not to present witnesses during the trial, as well as to their families and property from physical threats or terror, so that witnesses themselves really feel safe. In providing protection for witnesses, the Police experience obstacles including: Lack of legal awareness from the community. The fear of becoming a witness even though they already have legal awareness, this is because witnesses in drug cases are different from witnesses in other crimes. The efforts made by the Police in overcoming obstacles, by cultivating a sense of awareness from the public to be immediately responsive to surrounding conditions, instilling a sense of trust in the public not to be afraid to report about things that happen, improving the surveillance system, and cultivating better cooperation with the community, while reporting witnesses who know criminal acts but do not report can be subject to criminal sanctions according to existing legal provisions. Likewise for law enforcement officials must act in accordance with existing legal rules without any legal discrimination. whereas for reporting witnesses who know a crime but do not report it can be subject to criminal sanctions according to existing legal provisions. Likewise for law enforcement officials must act in accordance with existing legal rules without any legal discrimination. whereas for reporting witnesses who know a crime but do not report it can be subject to criminal sanctions according to existing legal provisions. Likewise for law enforcement officials must act in accordance with existing legal rules without any legal discrimination.

REFERENCES

- Andi Hamzah, 1996, Pengertian Hukum Acara Pidana Indonesia, CV Saptta Arta Jaya, Jakarta.
- Atmasasmita, Romli (1997), Tindak Pidana Narkotika Transnasional dalam Sistem Hukum Pidana Indonesia, Citra Aditya Bakti, Bandung.
- Burhan Ashsofa, 1998, Metode Penelitian Hukum, Rineka Cipta, Jakarta.
- Euginia Liliawati Muljono, 1997, Peraturan Perundang-undangan Narkotika dan Psikotropika, Harvarindo, Jakarta.
- Hadirman, 1999, Tindak Pidana Narkotik, Yayasan Alwasihila. Jakarta.
- Hari Sasangka, 2003, Narkotika dan Psikotropika dalam Hukum Pidana, Mandar Maju, Bandung
- M. Arief Hakim, (2004) Bahaya Narkoba Alkohol: Cara Islam Mengatasi, Mencegah dan Melawan, Bandung : Nuansa.
- Muladi dan Barda Nawawi Arief (1998), Teori dan Kebijakan Pidana, Alumni, Bandung.
- Merry Christina, 2004, Upaya Penanggulangan Penyalahgunaan Psikotropika Di Wilayah Hukum Polres Kediri, Skripsi tidak diterbitkan, Kediri, Fakultas Hukum Universitas Pawayatan Daha.
- Muladi, 1997, Ketentuan Pidana dan Praktek, Graviska, Jakarta.
- Prodjodikoro Wirjono, 1980, Hukum Acara Pidana di Indonesia, Sumur, Bandung.
- Rony Haritio Soemitro, 1988, Metodologi Penelitian Hukum, Ghalia Indonesia, Jakarta.
- Sadjijuno, 2006, Hukum Kepolisian, Laksbang Pressindo, Yogyakarta.
- Soejono Soekamto, 1986, Metode Penelitian Hukum, Universitas Indonesia, Jakarta.
- Widianti, 2001, Soal Perlindungan Saksi, Majalah Tempo, Edisi XII. 1.