

The legal protection of whistleblowers in the settlement of crime of corruption

Muhammad Zaky Naufali¹, Dahlan², Teuku Saiful²

¹ Student, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

² Lecturer, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Abstract

Given that there are still many cases where Whistle-Blowers are vulnerable to retaliation by the reported party that can harm their personal and family, especially if they are actually determined to be suspects in this case, we should know again about the reality of legal protection practices for Whistle-Blowers in the case of corruption crimes committed by the Witness and Victim Protection Agency (LPSK) and the Corruption Eradication Commission (KPK) in Indonesian legal traffic today. The purpose of the study is to explain the conditions that whistleblowers must protect in Positive Law in Indonesia. To explain the protection of whistleblowers has been maximized in Indonesia. And to explain what obstacles whistleblowers face in protection efforts. Research methods are procedures or ways to obtain the right way or determination through systematic means. On-the-subject research is normative research, i.e. legal research is carried out by examining library materials or pure data. The results showed that among the conditions that must be protected by whistleblowers in Positive Law in Indonesia are Security, confidentiality of identity, Protection from retaliation or adverse actions, The right to rewards or rewards, Legal protection. Protection in Indonesia against Whistleblowers Several cases in Indonesia show that there are still obstacles in providing protection to whistleblowers. Some of these cases include e-KTP corruption cases, land purchase cases, Sumber Waras Hospital, cases of disclosure of alleged violations at PT KAI. The obstacles faced by whistleblowers in protection efforts include physical threats, legal threats, exile or isolation, invasion of privacy, stigma or discrimination, difficulty in obtaining legal support, uncertainty or concern

Keywords: Implementation, child adoption, legal implication

Introduction

The concept of corruption is contained in Articles 2 and 3 of Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption, which lists acts that are prohibited and determined as criminal acts of corruption. It is proven that from various acts that are against the law in corruption crimes which generally refer to the following matters:

1. Trust-related manufacturing.
2. Such action benefits the perpetrator, other people, or the business.
3. Such action is detrimental to the economy or the state's financial condition.
4. Such action was committed against the law

The phrase "crown witness" refers to suspects or defendants who have been designated as witnesses to abuse or murder in the Indonesian justice system. When a person is appointed as a crown witness, a process known as "settlement" (criminal case settlement) is used to settle the case. Only certain crimes that require a crown witness can be a crown witness in a criminal case. The presence of the crown witness in the Indonesian legal system it is said to have the ability to uncover crimes, especially those involving many actors who have close relationships with each other and are closed in nature, such as crimes involving corruption, drugs, and other things. In order to protect their interests, criminals will often band together in response to this form of relationship to face investigation or even ban. This case is more challenging to prove than other criminal cases due to the nature of organized crime or the prosecution of white-collar crimes.

Article 184 of the Criminal Procedure Code explains the position of witnesses, placing witness reports above all other forms of evidence. This shows the importance of the position of the witness as a source of evidence. It must be acknowledged that much of the information used to identify cases of violation of law comes from the public. Similar to the previous procedure, the prosecutor's office was raised until finally in court, witness testimony is the main evidence and becomes a guideline for judges in determining whether or not someone is sentenced to prison. Thus, it is proven that the witness has a significant role in fighting for justice and law enforcement.

In English, the term "whistle blower" is used. This whistleblower is likened to a referee in the world of football or other sports, who is responsible for blowing the whistle if a player commits a mistake or violation. The whistleblower also acts as a disclosure of facts when certain individuals commit violations. In the Law on Witness and Victim Protection Agency, a person who provides information to law enforcement about an unlawful act that is expected to occur, is occurring, or has already occurred is called an informant.

Basically, the position of the whistleblower is very important for the investigation of corruption crimes. This refers to the important function of a whistleblower as a person who informs law enforcement about potential, ongoing or completed criminal activity and provides them with information, as well as participates in exposing various corrupt activities in public institutions, governments or private businesses. Therefore, considering this very important task, it is important to ensure legal protection for a whistleblower.

Article 5 point 1 Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims, as well as Article 15 Letter a of Law Number 30 of 2002 on the Corruption Eradication Commission, further regulates about assurance of legal protection for the informants.

"The assurance of protection is stated in Article 5 paragraph (1) of Law Number 31 of 2014, and is one of the 16 (sixteen) rights granted. The assurance of protection includes receiving protection for personal, family and assets safety, and free from threats with regard to the testimony that will be, is or has been given"

Circular Letter of the Supreme Court No. 4 of 2011 SEMA regulates the treatment for whistleblowers justice collaborators or are involved in certain criminal cases related to Law Number 13 of 2006 provides a more complete explanation of Article 10 paragraph (1) of the law, which The definition of "informant" is a person who provides information to law enforcer regarding the occurrence of a crime.

The term "whistleblower" is often used interchangeably with "justice collaborator", and in some publications it even appears that way. It should be noted that justice collaborators and whistleblowers work closely with law enforcement authorities to provide important details about published cases.

A Justice Collaborator is someone who has previously been accused of corruption, but who is willing to cooperate to divulge details about other participants and even identify the main perpetrator in hopes of receiving a leniency payment. Investigators or suspects can make invitations to become Justice Collaborators. As long as the reporter knows himself, he will inform investigators whether he is a suspect or not and whether he is involved in the case or not.

Whistleblowers are often mentioned as one of the efforts in the process of eradicating corrupt practices in the recent eradication of corruption. Whistleblowers have historically been associated with mafia-style criminal organizations because the Cosa Nostra, often known as the Sicilian Mafia, is the oldest and largest criminal organization in Italy and originated in Palermo. A whistleblower is someone who informs legal authorities of a suspected crime or testifies about it during a criminal justice process. Aside from being a whistleblower, or a person who discloses or testifies about alleged corruption, he also commits criminal acts that smell of corruption. His role is often equated with a reporter in Indonesian legislation.

In other words, a whistleblower must have legal protection both materially and immaterially from his personal security. Rights under current law must be reserved for the protection of whistleblowers within the criminal justice system. This protection is intended to show a sense of gratitude and respect to the complainant because he has reported an incident of corruption.

The case of Roni Wijaya illustrates this problem. Roni Wijaya is a witness protected by the KPK in the Hambalang project corruption case. Roni Wijaya succeeded in committing a criminal act of corruption by Mahfud Suroso which made all flows of money resulting from corruption transparent. However, elements turned against Roni Wijaya for his testimony, accusing him of using fake tax invoices.

In May 2019, Muhammad Asrul, a writer for *berita.news*, wrote three articles related to alleged corruption in the city of Palopo. Muhammad Asrul then submitted an appeal to

the Makassar High Court. Farid Karim Judas, Head of BPKSDM Palopo, mentioned the circulating news. Farid Karim Judas reported Asrul to the South Sulawesi Regional Police on December 17, 2019, following the publication of this information. In addition, on January 29, 2020, a case investigation was carried out, and on January 30, 2020, Muhammad Asrul received a letter. And the panel of judges at the Palopo District Court sentenced Muhamad Asrul to three months in prison.

Nurhayati, a woman from Cirebon who serves as treasurer for Citemu sub-village, Cirebon Regency, is a complainant who was named a suspect in a recent case by the police or the chief of police. Nurhayati criticized the Village Chief Supriyadi for committing the criminal act of corruption in APBDes funds, but the Cirebon Police Chief named Nurhayati as a suspect. This is what the community is afraid of, when a problem is reported, the problem case is considered. According to *kompas.com*, the chief of Citemu Village suffered a total state loss of Rp. 818 million between BUMDes corruption cases from 2018 to 2020.

Stanley Ering is another example of a whistleblower who experienced retaliation for the disclosure of alleged corruption at Manado State University by the Chancellor of Unima Philolus, apart from the case involving Roni Wijaya and Muhammad Asrul. The attack took the form of Phytolus reporting Stanley to the Police. After being charged with Article 311 of the Criminal Code and found guilty, Stanley was again charged with defaming his name based on Article 27 (3) Law of Electronic Information and Transactions while awaiting an order for his execution in prison.

Recognizing the practice of legal protection against reporters in cases of criminal acts of corruption that were carried out by Witness and Victim Protection Agency and the Corruption Eradication Commission is necessary because there are still many cases where the complainant is vulnerable to retaliation by the party who reported it, which can harm himself and his family, especially if he is actually a suspect in this case.

This study aims to clarify the conditions in which journalists in Indonesia must be protected by affirmative law, to describe the highest level of whistleblower protection in Indonesia as well as to describe the challenges reporters face in their defense actions.

Research methodology

Research technique is a process or method to find the correct answers or conclusions through organized steps. The legal studies that are carried out by looking at the sources of literature or by simply using data are informative research. By using the legal approach to legislation, the icon-text approach, and the case approach, this research uses an normative juridical approach.

Research outcome and discussion

A. Conditions That Must Be Protected by Whistleblowers in Positive Law in Indonesia

Whistleblower is someone who provides information or complaints about actions that are detrimental to the interests of the public or the community to those in authority. In Indonesia, there are several regulations that regulate the protection of whistleblowers, namely as follows:

1. Article 37 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes states that "whistleblowers who report corruption have legal

protection. Such protection includes security, confidentiality of identity, and protection from retaliation or harmful action. In addition, whistleblowers are also entitled to receive awards or rewards”.

2. Government Regulation Number 43 of 2018 concerning Reporting of Gratification Article 36 paragraph (3) of Government Regulation Number 43 of 2018 states that “whistleblowers who report alleged gratuities have legal protection. Such protection includes security, confidentiality of identity, and protection from retaliation or harmful actions.
3. Law Number 14 of 2008 on Public Information Openness
Article 41 states that “a whistleblower who provides correct public information and does not harm other parties has legal protection. Such protection includes security, confidentiality of identity, and protection from reprisals or harmful actions”.
4. Financial Services Authority Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection of the Financial Services Sector
Article 19 paragraph (5) POJK Number 1/POJK.07/2013 states that “whistleblowers reporting suspected violations in the capital market sector have legal protection. This protection includes security, confidentiality of identity, and protection from retaliation or harmful actions.

In these regulations, the whistleblower has the right to get protection from retaliation or actions that are detrimental to the party being reported. In addition, whistleblowers also have the right to security and confidentiality of their identities. This aims to prevent whistleblowers from receiving threats or intimidation from the party being reported, so that they can report actions that are detrimental to the public interest without fear of consequences that are detrimental to themselves.

In addition, several regulations such as the PTPK Law and POJK Number 1/POJK.07/2013 also provide rights for whistleblowers to receive awards or rewards for the information provided. This is expected to motivate whistleblowers to report actions that are detrimental to the public or community interest.

However, in practice, there are still many whistleblowers who experience difficulties in reporting actions that are detrimental to the public or community interests. Therefore, efforts are needed from the government and society to ensure that whistleblowers receive adequate and guaranteed protection, so that they can provide important information for the public interest without fear of self-defeating consequences.

Thus, Law Number 31 of 2014 provides clearer and comprehensive legal protection for whistleblowers in reporting criminal acts. This protection includes the right to security, confidentiality of identity, and protection from retaliation or harmful action, as well as the right to get an award or reward for the information provided. This is expected to motivate whistleblowers to report actions that are detrimental to the interests of the public or the community without fear of consequences that are detrimental to themselves.

However, despite the existence of Law Number 31 of 2014, there are still obstacles in practice. One of the obstacles that still often occurs is inadequate security and protection for whistleblowers, especially for those who report criminal acts involving influential parties or have political power. Therefore, efforts are needed to ensure that whistleblowers receive adequate and guaranteed protection, so that they can provide important information for the public interest without fear of self-defeating consequences.

Terms that must be protected by whistleblowers in positive law in Indonesia include:

1. Security

Whistleblowers must receive security protection so as not to receive threats or intimidation from the party being reported. This security can be in the form of physical protection, such as escort or protection of residence, or legal protection, such as supervision and prosecution of parties who take retaliatory actions or actions that are harmful.

Security is one of the conditions that must be protected for whistleblowers in positive law in Indonesia. This aims to prevent whistleblowers from receiving threats or intimidation from the party being reported, so that they can report actions that are detrimental to the public interest without fear of adverse consequences for themselves. The security that must be provided to whistleblowers can be in the form of physical protection or legal protection.

In several laws or regulations, such as Law Number 31 of 1999 on the Eradication of Corruption Crimes, whistleblowers who provide information about criminal acts of corruption also receive special protection, such as protection from dismissal, salary reduction, or other actions that are detrimental.

In practice, there are still obstacles in providing security to whistleblowers, especially if whistleblowers report actions involving influential or powerful parties. Therefore, there is a need for efforts from the government and society to ensure that whistleblowers receive adequate and guaranteed protection, so that they can provide important information for the public interest without fear of self-defeating consequences.

2. Protection from countermeasures or harmful actions

Whistleblowers must receive protection from retaliation or adverse actions from the reported party, such as dismissal, threats, or other detrimental actions.

Protection from retaliation or harmful actions can be done in several ways. One way is to provide adequate legal protection. In this case, the authorities, such as the police or the prosecutor's office, must ensure that whistleblowers receive adequate legal protection, including in terms of investigations and prosecutions of parties who take countermeasures or actions that are detrimental.

In addition, in several laws or regulations, such as Law Number 31 of 1999 on the Eradication of Corruption Crimes, whistleblowers who provide information about criminal acts of corruption also receive special protection regarding protection from retaliation or harmful actions. Article 22 paragraph (3) of the Law states that parties who take countermeasures or take actions that are detrimental to whistleblowers can be charged with imprisonment for a maximum of 4 years and/or a fine of up to IDR 200 million.

However, in practice there are still obstacles in providing protection from retaliation or actions that are detrimental to whistleblowers. One of the obstacles that often occurs is weak supervision and law enforcement against parties who take countermeasures or take actions that are detrimental. Therefore, there is a need for efforts from the government and society to ensure that whistleblowers receive adequate and guaranteed protection, so that they can provide important information for the public interest without fear of self-defeating consequences.

3. Legal protection

Whistleblowers must receive clear legal protection that can be enforced by the authorities, so that they can report actions that are detrimental to the public interest or society without fear of consequences that are detrimental to themselves.

Legal protection is a condition that must be protected for whistleblowers in positive law in Indonesia. This aims to ensure that whistleblowers who provide important information about the occurrence of actions that are detrimental to the interests of the public or society, get adequate legal protection.

"Several laws and regulations, such as Law Number 31 of 1999 on Eradication of Corruption Crimes, Law Number 13 of 2006 on Protection of Witnesses and Victims, and Law Number 14 of 2008 on Public Information Disclosure, can be used to regulate legal protection for reporters."

For example, in Law Number 31 of 1999 on the Eradication of Corruption, Whistleblowers who provide information regarding criminal acts of corruption receive adequate legal protection. Article 22 paragraph (1) of the Law states that a whistleblower who reports a criminal act of corruption cannot be subject to criminal charges, unless the whistleblower is proven to have committed a more serious crime or was involved in the same crime as the one he reported. In addition, whistleblowers also receive legal protection in the event of dismissal, reduction of salary, or other actions that are detrimental.

Meanwhile, in Law Number 13 of 2006 on Protection of Witnesses and Victims, Whistleblowers who testify in court also receive adequate legal protection, such as protection against threats and intimidation, as well as protection against dismissal or salary reduction.

In Law Number 14 of 2008 on Public Information Openness, whistleblowers are also protected by law in terms of providing public information or information related to public interests. Article 27 of the law states that everyone who provides public information or submits requests for public information has the right to receive legal protection. However, in practice there are still obstacles in providing legal protection for whistleblowers. Some whistleblowers experience difficulties in obtaining adequate legal protection, especially if the reported party has high authority. In addition, there are still weaknesses in monitoring and law enforcement against whistleblower violations.

In practice, whistleblowers still face obstacles in reporting adverse actions. Therefore, efforts are needed from the government and society to ensure that whistleblowers receive adequate and guaranteed protection, so that they can provide information that is important for the public interest without fear of self-defeating consequences.

B. Protection Against Whistleblowers Has Been Maximum in Indonesia

Several cases in Indonesia show that there are still obstacles in providing protection for whistleblowers. Some of these cases include:

1. The e-KTP corruption case: After providing important information regarding the alleged corruption in the e-KTP project, KPK investigator Novel Baswedan suffered an acid attack in 2017. Although the case has been handled by the authorities, the perpetrators of the attack have not been caught and Novel Baswedan is still experiencing harassment vision.
2. Case for buying land for Sumber Waras Hospital: After providing important information regarding allegations of corruption in purchasing land for Sumber Waras Hospital, two employees of the DKI Jakarta Provincial Government, Yusuf Mirza and Dwi Nugroho Adhiasto, were fired. Even though the two have filed suit in court, the judge dismissed their lawsuit.

These cases show that there are still obstacles in providing protection for whistleblowers in Indonesia. One of the main obstacles is the weak supervision and law enforcement against whistleblower violations. This causes there are still many cases of countermeasures or adverse actions that are not followed up firmly.

In addition, there are still weaknesses in the legal provisions that guarantee whistleblower protection. Some of the existing provisions still require revision or refinement to make it more suitable to current conditions and needs.

Therefore, there is a need for more serious efforts from the government and the public to ensure that the protection of whistleblowers can be strengthened and properly guaranteed. These efforts can be made by strengthening supervision and law enforcement against violations of whistleblowers, as well as strengthening legal provisions that guarantee protection for whistleblowers.

Apart from that, it is also necessary to socialize and educate the public regarding the importance of protecting whistleblowers, as well as providing easy access for whistleblowers to report violations or actions that are detrimental to the interests of the public or society. In this case, the role of the mass media and civil society organizations can also assist in fighting for whistleblower rights and strengthening demands for these rights before the authorities or in front of the public.

In addition, it is also necessary to continuously monitor and evaluate the efforts that have been made to strengthen the protection of whistleblowers in Indonesia. By carrying out this monitoring and evaluation, it is hoped that weaknesses in the system will be found that need to be repaired and strengthened, so that the protection of whistleblowers can be more optimal in the future.

In this case, the protection of whistleblowers is very important to ensure that whistleblowers can provide important information that can assist the government or the public in preventing or overcoming actions that are detrimental to the interests of the public or society. Therefore, it is necessary to have a strong commitment from the government and society to protect and strengthen the rights of whistleblowers as a form of support for their efforts to provide important information for the benefit of the public and society.

C. Obstacles Faced by Whistleblowers in Protection Efforts

Whistleblower is a person who provides important information regarding the occurrence of actions that are detrimental to the public or community interests. However, in carrying out protection efforts, whistleblowers often face obstacles that can threaten their security, privacy and welfare. Some of the obstacles faced by whistleblowers in protecting efforts include:

1. Physical threats

Whistleblowers can experience physical threats, such as violence, intimidation, or even murder, which are carried out by parties who feel threatened by the disclosure of information provided by the whistleblower.

2. Legal threats

Whistleblowers may experience lawsuits from parties who are aggrieved due to the disclosure of important information provided by the whistleblower. This can cause whistleblowers to experience difficulties in defending their rights and obtaining adequate legal protection.

3. Seclusion or isolation

Whistleblowers may experience exile or social isolation or even be fired from their jobs by parties who feel threatened by disclosing important information provided by whistleblowers. This can cause whistleblowers to lose sources of income and social support, as well as experience difficulties in looking for a new job.

4. Uncertainty or worry

Whistleblowers may experience uncertainty or concern about their future after disclosing important information. This can cause whistleblowers to experience stress, anxiety or even depression, which can impact their physical and mental health.

These obstacles can cause whistleblowers to feel afraid or reluctant to report actions that are detrimental to the public or community interest. This can impact government or community efforts in preventing or overcoming actions that are detrimental to the public or community interests.

Therefore, it is very important to strengthen protection against whistleblowers and provide adequate support. This can be done by strengthening legal provisions that guarantee protection for whistleblowers, strengthening supervision and law enforcement against whistleblower violations, and providing incentives or rewards for whistleblowers who provide important information about the occurrence of actions that are detrimental to the public or community interest.

In addition, the role of the mass media and civil society organizations can also assist in fulfilling whistleblower rights and strengthening demands for these rights before the authorities or in public. In this case, outreach and education to the public about the importance of protecting whistleblowers also needs to be done to change the negative stigma and increase public awareness about the important role of whistleblowers in preventing or overcoming actions that are detrimental to the public or community interest.

In addition, it is also necessary to strengthen transparent, accountable and accountable mechanisms so that whistleblowers can submit reports or complaints easily and safely. The government and society also need to provide moral and social support for whistleblowers, for example by

providing psychological, financial or social support, so that whistleblowers feel supported and protected in disclosing important information.

By strengthening the protection and support for whistleblowers, it is hoped that it will provide a sense of security and trust for them to report actions that are detrimental to the interests of the public or society without fear of retaliation or adverse actions. This can help strengthen integrity and accountability in various sectors, and improve the quality and effectiveness of public services provided to the public.

Conclusion

The conditions that must be protected by whistleblowers in positive law in Indonesia include security, confidentiality of identity, protection from reprisals or harmful actions, rights to awards or rewards, legal protection.

Several cases in Indonesia show that there are still obstacles in providing whistleblower protection. Some of these cases include the e-KTP corruption case, the purchase of land for the Sumber Waras Hospital, the case of exposing alleged violations at PT KAI.

Obstacles faced by whistleblowers in protecting efforts include physical threats, legal threats, alienation or isolation, violations of privacy, stigma or discrimination, difficulties in obtaining legal support, uncertainty or concern.

References

1. Anwar Usman, dan A.M. Mujahidin, Whistleblower Dalam Perdebatan Pemberantasan Tindak Pidana Korupsi, dapat diakses pada <http://www.pn-purworejo.go.id>, diunduh pada hari Selasa, 4 Oktober 2022, Pukul 10.25 WIB.
2. Ardito Ramadhan, Kasus Nurhayati Pelapor Dugaan Korupsi Yang Malah Dijadikan Tersangka, Dinilai Berdampak Buruk Bagi Pemberantasan Korupsi, <https://nasional.kompas.com/read/2022/02/23/19240381/kasus-nurhayati-pelapor-dugaan-korupsi-yang-malah-dijadikan-tersangka>, diakses pada tanggal 24 September 2022, pukul 21.47 WIB.
3. Arga Sumantri, Perlindungan Terhadap Pelapor Kasus Korupsi Dinilai Masi Lemah, <http://hukumonline.com/berita/a/icjr-minta-negara-lindungi-whistleblower-dari-serangan-balik>, di akses pada tanggal 10 November 2022 pukul 15.20 WIB
4. Arjuno, Bambang, Masruchin Ruba'i, and Prija Djatmika. "Bentuk Perlindungan Hukum Terhadap Pelapor Tindak Pidana Korupsi (Whistleblower) Dan Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Di Indonesia." *Jurnal Selat*, 2017:4(2):144-159.
5. Desak Made Ria Sutiadewi, and Yohanes Usfunan, "Perlindungan Hukum Terhadap Whistleblower Dalam Persidangan Perkara Tindak Pidana Korupsi," *Kerta Wicara: Journal Ilmu Hukum*, 2018:7(2):1-5.
6. Fauziah, Rahmi. "Perlindungan Hukum Bagi Whistleblower Dalam Perkara Pidana (Analisis Hukum Pidana Islam dan Undang Undang No. 31 Tahun 2014 Tentang Perlindungan Saksi dan Korban)." PhD diss., Universitas Islam Negeri Sumatera Utara, 2022.
7. Habib Rahman, Lilik Purwastuty, and Dessy Rakhmawati, "Perlindungan Hukum Terhadap Saksi Mahkota Dalam Proses Pemeriksaan Perkara Pidana," *Journal Of Crime*, 2020:1(3):123.