The Urgence of Whistleblower Legal Protection in the Criminal Justice System

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Abstract

The role of the whistleblower is significant in uncovering a case because many cases are not revealed. After all, no one reports or becomes a whistleblower. A whistleblower is legally protected and cannot be prosecuted civilly or criminally. Although currently, there is a Witness and Victim Protection Agency that carries out the task of protecting witnesses and victims, the Witness and Victim Protection Agency have not yet reached out to whistleblowers. The protection is given to whistleblowers only reduces punishment if the whistleblower is involved in the reported case or witnesses the perpetrator. The form of protection given to whistleblowers is legal and unique, and protection is not provided if the witness does not give testimony in good faith. So it is necessary to revise the Criminal Procedure Code and the Law on the Protection of Witnesses and Victims so that the whistleblower who is a witness to the perpetrator is included as one who should be protected by both criminal charges, even though he is the perpetrator and not only reduces the sentence.

A. Introduction

The success of a criminal justice process will depend on the evidence that has been successfully presented in the trial, one of which is the testimony of witnesses. Currently, not a few cases have foundered in the middle of the road due to the absence of witnesses to support the duties of law enforcement officers, namely the police and prosecutors. Thus, it is clear that the presence of witnesses is crucial in a criminal justice process as evidence.

One of the legal evidence, according to the Criminal Procedure Code (KUHAP), in the criminal justice process is the testimony of Witnesses and Victims who know, hear, see and experience for themselves the occurrence of
a criminal act (delict) to seek and find clarity about the offense committed by
the perpetrator of the crime (the subject of the offense). Law enforcers in
seeking and finding clarity about criminal acts committed by perpetrators of
criminal acts, often experience difficulties because they cannot present
Witnesses and Victims due to threats, both physical and psychological from
certain parties.

Law Number 31 of 2014 concerning Amendments to Law Number 13
of 2006 concerning Protection of Witnesses and Victims emphasizes that
witnesses and victims must be given adequate legal and security protection,
so that witnesses and victims do not feel threatened or intimidated by their
rights and lives. This protection is the primary protection needed by
Witnesses and Victims. If necessary, the Witness and Victim must be placed
in a location that is kept secret from anyone to ensure that the Witness and
Victim are safe. The legal protection by the explanation of Law no. 31 of 2014
concerning Amendments to Law no. 13 of 2006 concerning the Protection of
Witnesses and Victims is expected to create a situation that allows the public
to no longer feel afraid to report a crime they know or experience to law
enforcement.

Each statutory regulation or special criminal law has clearly regulated
the role of the community in tackling any criminal acts, such as in the Child
Protection Law, Narcotics Law and the Corruption Law and Terrorism Law.
One of the important roles of every member of the community in tackling any
criminal act is to be a "whistle blower" which is simply defined as a reporter,
whistle blower, or fact-breaker.¹

It is not an easy matter to become a whistle blower because it is not
without risk for someone to take the courageous choice of blowing his whistle,
hitting a gong, and leaking secrets to uncover crimes. As an insider, being a
part of the environment where the information he leaked, is of course very
aware of what and how the modus operandi of the crime has been neatly
wrapped up and kept secret to the public and law enforcement.². The reported
person can threaten the life, family and property of the complainant and not
everyone dares to take the risk, but as a form of community participation in
tackling crime. Dare to take risks that are very dangerous for the physical and
psychological safety of himself, and his family, risks to his work and future³.

Based on the Circular Letter of the Supreme Court (SEMA) Number
4 of 2011 concerning Treatment for Criminal Acts of Whistleblowers (Whistle
Blowers), and Witnesses of Cooperating Perpetrators (Justice Collaborators)
in Certain Criminal Acts. provide the definition of a whistle blower as a person
who knows and reports certain criminal acts and is not part of the perpetrators

2006. Hal. 1
² Firman Wijaya. Whistle Blower dan Justice Collaborator Dalam Perspektif Hukum.
³ Ibid. Hal. 42
of the reported crime\(^4\). SEMA Number 4 of 2011 concerning the Treatment of Criminal Acts of Whistleblowers (Whistle Blowers) and Witnesses of Cooperating Perpetrators (Justice Collaborators) in Certain Criminal Acts explains the criteria for a person to be categorized as a whistle blower and also a justice collaborator\(^5\) and how to obtain guarantees for the protection of a witness.

Whistle blower is an informant (can be from inside or outside the institution/company) who discloses policy errors or violations of law that occur in an institution/company with the hope of stopping the error and not repeating it. However, the existence, role and courage of these very positive whistle-blowers are often not parallel with the implications and consequences they must experience. Various pressures and threats, both physical (such as kidnapping and even murder) and non-physical (such as the terror of losing career promotions, jobs, ostracism by the work community and so on), were forced to face them. In fact, it is not uncommon for a "backlash" to occur after the disclosure of facts (witnesses), namely by bringing the whistleblowers to court legally by the parties whose faults were disclosed with accusations of being perpetrators of slander or defamation.

The facts above confirm that although the existence and role of whistleblowers are essential and significant in optimizing law enforcement, Indonesia's legal system and conditions have not yet provided the proper protection guarantee. Even though it already has Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims which in Article 10 paragraph 1 emphasizes that "Witnesses, Victims, Perpetrators, and/or Reporting Parties cannot be prosecuted legally, both criminally and civilly for testimonies and/or reports that will be, are being, or has been given, unless the testimony or report is not given in good faith." Even if it is related to a perpetrator, then his position as a whistleblower must be something that should be considered (as a punishment) in the legal process that he will undergo. In addition, there is a Supreme Court Circular (SEMA) 04 of 2011 concerning the Treatment of Whistle Blowers and Justice Collaborators in Certain Criminal Cases. Only a circular within the Supreme Court provides protection, not including other law enforcers.

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\(^4\) SEMA Nomor 4 Tahun 2011 tentang Perlakuan Bagi Pelapor Tindak Pidana (Whistle Blower), dan Saksi Pelaku Yang Bekerjasama (Justice Collaborator) didalam Tindak Perkara Pidana Tertentu.

In reality, there are several people who report that a crime has occurred, but instead the complainant becomes a suspect, namely defamation. The case gives a negative impression on law enforcement in Indonesia, because a Witness is a person who can provide information for the purposes of investigation, prosecution, prosecution, and examination in a court of law regarding a criminal act which he has heard himself, seen himself, and/or experience yourself. The novelty in this article is to find out the role of whistleblowers in revealing the voice of cases in the criminal justice system.

In this paper, using a form of normative legal research. Normative legal research is also called library research, (Library Research) is research conducted by tracing or studying and analyzing legal materials. According to the problem, namely the protection of witnesses who disclose facts (whistleblowers).

B. Discussion
1. Protection for Whistleblowers

Legal protection is a form of service that must be carried out by law enforcement officers or security forces to provide a sense of security. Both physically and mentally, to victims and witnesses, from threats, harassment, terror, and violence from any party, given at the stage of investigation, investigation, prosecution, and or examination in court. Legal protection can be interpreted as any form of protection that is regulated and based on laws and regulations based on legal certainty. Furthermore, according to Philipus M. Hadjon, there are two legal protections, namely:

Preventive and repressive legal protection. Preventive legal protection is given the opportunity to file objections (inspraak) or opinions before a government decision gets a definitive form. This means that preventive legal protection aims to prevent disputes from occurring, while on the contrary preventive legal protection is very significant for government actions based on freedom of action, because with preventive legal protection the government is encouraged to be careful in making decisions based on discretion.

One way to reveal the organized criminal practice is the role of a whistleblower, which can encourage disclosure of the mode of crime to be relatively easier to uncover. According to Komariah E. Sapardjaja, The role

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6 Pasal 1 ayat (1) UU No. 31 Tahun 2014 tentang Perubahan atas UU No. 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban
7 Peraturan Pemerintah Nomor 2 Tahun 2002 Tentang Tata Cara Perlindungan Korban dan Saksi Dalam Pelanggaran Hak Asasi Manusia Yang Berat.
8 Faisal. Menerobos Positivisme Hukum. Gramata Publishing. Bekasi. 2012. hal. 73
10 Komariah E. Sapardjaja, (Pakar Hukum Pidana Universitas Padjajaran Bandung), dalam wawancara khusus di Newsletter Komisi Hukum Nasional, Juli 2010
of the whistle blower is very important and necessary in the context of the process of eradicating non-corruption crimes. However, as long as it is not a kind of gossip for the disclosure of corruption cases or judicial mafia. What the Whistleblower said was really supported by concrete facts, not just anonymous letters or rumors. If there is a report from a Whistleblower, the investigation or public prosecutor must be careful to accept it, not arbitrarily, what is reported is immediately accepted and must be tested first.

In the context of our positive law, the presence of the Whistle Blower needs to be protected so that corruption cases can be detected and exposed. But in practice, this condition is not an easy problem, because there are many things that need to be studied and how to actually place the Whistle Blower in an effort to eradicate corruption. Because normative juridical, based on Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, Article 10 Paragraph (2) where there is no place for a whistle blower to obtain legal protection. In fact, a witness who is also a suspect in the same case cannot be acquitted of a criminal charge if he is found to be legally and convincingly guilty, but his testimony can be taken into consideration by the judge in mitigating the sentence to be imposed.

Protection for whistle blowers is very weak. In fact, whistleblowers tend to be silenced because they are considered to damage the good name of the institution. Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims does not specifically regulate the protection of whistle blowers. In Article 10 Paragraph (1) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, it is stated that Witnesses, Victims, Perpetrators, and/or Whistleblowers cannot be legally prosecuted, both criminal and civil, for testimonies and/or reports that will be, are being, or have been given, except for testimonies or reports. given not in good faith. The article is actually strong, however, in Article 10 Paragraph (2) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, the protection of witnesses is weakened. A witness who is also a suspect in the same case cannot be released from criminal charges if he is legally and convincingly proven guilty, but his testimony can be taken into consideration by the judge in mitigating the sentence to be imposed.

Legal protection for whistleblowers is currently still weak, public participation in uncovering legal mafia practices and corruption will be slack. As a result, efforts to establish a clean government bureaucracy are also increasingly difficult. It is even more ironic, if a whistleblower who uncovers a legal mafia practice is suspected of receiving treatment or revenge. Thus, the whistleblower (the reporter) has taken a high risk, even risked his life, but an appreciation and appreciation is not paid attention to, so this can lead to a critical condition of trust regarding the guarantee against the whistleblower/reporter.
The regulation regarding the protection of the whistle blower (the whistleblower/rapporteur) is explicitly regulated in Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, Article 10 Paragraph (1) states that "A witness, victim and reporter cannot be prosecuted both criminally and civilly for the testimony report that will be, is being, or has been given". The rules contained in Article 10 Paragraph (1) of Law No. 13 of 2006 are ambiguous and contradictory, there is the same article in Paragraph (2), namely: "In the event that there is a lawsuit against a Witness, Victim, Witness Perpetrator, and/or or the Whistleblower for the testimony and/or report that will be, is being, or has been given, the lawsuit must be postponed until the case he reports or he gives testimony has been decided by the court and has permanent legal force, but his testimony can be considered by the judge in mitigating the sentence which will be dropped".

The provisions of Article 10 Paragraph (2) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, there are the words “Perpetrator's witness (meaning suspect) is a formulation that cannot be consistently understood against a witness who also has the status of a witness, victim, reporting witness then suddenly turns into a suspect. This can lead to multiple interpretations and create legal uncertainty. Then if we look in various countries about whistle blowers, it is certain that they are in a mafia network, which clearly knows there is a malicious conspiracy, so that it is not uncommon for a crime syndicate to be dismantled, due to a disobedience committed by the whistle blower to dismantle or uncover what mafia groups are doing. As a reward, the whistle blower was released from criminal charges even though the witness is a witness to the perpetrator as stipulated in Article 10 paragraph 2 of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims.

Article 10 Paragraph (2) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims is against the spirit of the whistleblower. Why? Because this article does not meet the principle of protection against a whistle blower, the person concerned will still be sentenced to a criminal sentence if he is involved in the crime. More Eddy O.S. Hiariej gave an assessment that Article 10 Paragraph (1) and Paragraph (2) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, there are 3 (three) confusions:

1) A witness who is also a suspect in the same case will eliminate the defendant's excusatie rights. This is an element of judicial

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12 Ibid.
objectivity. When the whistleblower is a witness in court, his statement is valid as evidence if it is pronounced under oath. If the whistleblower has the status of a defendant, he is given not under oath;

2) Therein lies the ambiguity, who will be tried first or at the same time; and

3) The provisions of Article 10 Paragraph (2) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims is counter-legacy with Paragraph (1) in the same article and law, essentially stating that witnesses, victims, perpetrators’ witnesses and the complainant cannot be prosecuted legally, both criminally and civilly, for reports of testimonies that have been reported, will, is or has been given, unless the testimony or report is not given in good faith.

Article 10 Paragraph (2) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims makes the understanding of witnesses who are also suspects (witnesses of perpetrators) increasingly unclear, because there is explained that a witness who can also be a suspect or witness to the perpetrator, cannot be released from criminal or civil lawsuits. This means that at the same time a witness may become a suspect. Even though someone has become a whistleblower, it is possible to provide leniency for the whistleblower, but this possibility still cannot make someone who becomes a whistleblower breathe a sigh of relief or even make someone interested in becoming a whistleblower at all.

A person who has become a whistleblower, when referring to Article 10 Paragraph (2) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, the hope of escaping from lawsuits is very difficult, because this article has confirmed that a witness to the perpetrator/suspect in the same case cannot be released from criminal prosecution if he is legally and convincingly proven guilty. To be able to escape from lawsuits is a hope for whistleblowers who are also perpetrators of criminal acts, because to be free from lawsuits, it is almost impossible. In addition to the provisions of Article 10 Paragraph (2) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, Article 191 Paragraph (1) of the Criminal Procedure Code stipulates that if the court is of the opinion that from the results of the examination in court, the guilt of the defendant for the actions he is accused of is not legally and convincingly proven, then the defendant is acquitted.

Meanwhile, the whistle blower who is also the perpetrator of a criminal act is strongly suspected of having made a mistake. Therefore, it is very easy to prove it legally and convincingly in court. It is possible for him to be free from lawsuits as contained in Article 191 Paragraph (2) of the
Criminal Procedure Code which states that "if the court is of the opinion that the act he is accused of is proven, but the act does not constitute a criminal act, then the defendant is dismissed from all lawsuits.". It's just that getting away from lawsuits is also difficult, because the whistleblower who is also a witness to the perpetrator of a crime who is strongly suspected of having made a mistake, his actions are not included in the basic framework of criminal abolition.

According to M. Jasin, a whistleblower must receive protection. This is explicitly regulated in Article 33 of the United Nations Convention Against Corruption (UNCAC). This convention has been ratified by Indonesia through Law no. 7 of 2006. The KPK itself is based on Article 15 point (a) of Law no. 30 of 2002 is obliged to provide protection for reporting witnesses. Although currently there is a Witness and Victim Protection Agency (LPSK) which carries out the task of providing protection for witnesses and victims. However, the scope of LPSK unfortunately has not reached the whistleblower.

Law Number no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims does not state that a whistleblower is a party that is given protection. Only witnesses and victims are regulated in this law. For this reason, the formulation of Article 33 of UNCAC should be included in the Witness Protection Act. According to Saldi Isra, that:

All norms in the LPSK Law should be included to provide protection against Whistleblowers, but instead threaten Whistleblowers. This can be noted in Article 10 Paragraph (2) of Law No. 13 of 2006, “A witness who is also a defendant in the same case cannot be acquitted of a criminal charge if it is proven legally and convincingly. But his testimony can be used as a judge's consideration in mitigating the sentence imposed”.

In Indonesia there is no clear regulation regarding whistleblowers, in Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims only regulates the protection of witnesses and victims, not the complainants and witnesses of the perpetrators. Whistleblowers cannot be prosecuted criminally or civilly for cases brought to law enforcement. Big cases such as the tax mafia are usually uncovered by insiders themselves, therefore there needs to be an arrangement for protecting whistleblowers.

As for the criteria for a person to become a whistleblower, there is no need, because anyone who really knows of a malicious conspiracy, then if he actually gives a report or testimony to law enforcement, then that person is legally obligated to be protected.

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13 Saldi Isra, Guru Besar Hukum Tata Usaha Universitas Andalas Padang, (dalam Newsletter Komisi Hukum Nasional No. 6 Juli 2006).
2. Forms of Protection Against Whistle Blower

Legal protection here can be divided into 2 (two) types, namely legal protection and special protection against threats. Legal protection can be in the form of immunity given to whistleblowers so that they cannot be contested civilly or criminally prosecuted as long as the person concerned provides data, facts, testimony in good faith or the person concerned is not the perpetrator of the crime itself. Meanwhile, special protection for whistleblowers is given by the state to overcome possible threats that endanger their lives.

Law Number no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims in his explanation emphasized that in order to foster public participation in uncovering criminal acts, it is necessary to create a conducive climate by providing legal protection and security to everyone who knows or finds something that can help uncover criminal acts committed, have occurred and report the matter to law enforcement. The guarantee of legal protection and security is expected to create a situation that allows the public no longer to feel afraid to report a crime they know to law enforcement because they are worried or afraid that their life will be threatened by certain parties.

Explanation of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims provides a definition of the reporter, namely: "a person who provides information to law enforcement regarding the occurrence of a crime." The formulation of this law emphasizes that those who can provide reports or information on the occurrence of a criminal act are witnesses and or victims (victim witnesses). These whistleblowers are whistleblowers because they are directly or indirectly involved in the occurrence of a criminal act, meaning: they are the ones who saw for themselves, heard for themselves and experienced the occurrence of criminal acts committed by the perpetrators themselves.

Whistleblowers can also be parties that are not directly related, indirectly receive the consequences of a criminal event, for example someone who knows or finds the existence of documents or data from criminal acts. Experts can also be classified as revealers of facts if their statements are crucial in revealing facts for proving a crime at trial (key witness).

Yunus Husein argues that 2 (two) types of protection can be distinguished for whistleblowers, namely:

1. Legal Protection and
2. Special Protection.

Ad.1. Legal Protection

The legal protection given to witnesses is contained in Article 10 paragraph 1 of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims in the form of
immunity given to witnesses and or victims as whistleblowers, namely Witnesses, Victims, Perpetrators, and/or Reporting Parties cannot be legally prosecuted, both criminal and civil for their testimonies and/or reports. that will, are being, or have been given, unless the testimony or report is not given in good faith. As well as a suggestion for anyone to divulge the name of the reporter accompanied by criminal threats for the violation, in accordance with Article 41 that "Every person who unlawfully informs the existence of Witnesses and/or Victims who are being protected in a temporary residence or new residence as referred to in Article 5 paragraph (1) letter k and letter l shall be sentenced to a maximum imprisonment of 7 (seven) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs)".

Other legal protection is in the form of a prohibition for anyone to divulge the name of the reporter or the obligation to keep the name of the complainant accompanied by criminal threats against the violation. Whistleblowers (witnesses and victims) need this legal protection.

The immunity granted to witnesses and or victims as whistleblowers so that they cannot be civilly sued or criminally prosecuted is a legal breakthrough that must be made to uncover criminal acts that are difficult to prove and are carried out with a systematic and organized modus operandi (extraordinary crime). Crimes that are classified as extraordinary crimes are certain cases, including: corruption, narcotics/psychotropic crimes, terrorism crimes and other crimes that result in the position of witnesses and victims being faced with situations that are very dangerous for their lives.¹⁴

Legal protection is in the form of not being able to be sued in a civil manner or criminally prosecuted by whistleblowers who report officials who accept bribes that there has been an abuse of authority and even the bribe giver has counterattacked by reporting or reporting the complainant to the competent authority on charges of committing a criminal act of defamation. The reverse burden of proof system adopted in the corruption law requires the defendant or suspect (reported) to prove that he has not committed a corruption crime.¹⁵

An interesting study of the problems above is the witness or the reporter who has been threatened and has been criminalized by the reported party to the court both criminally and civilly. Cases that occur as mentioned above where whistleblowers or whistleblowers are criminalized occur when the Witness and Victim Protection Agency (LPSK) has not yet been established as mandated by Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims. People who are required to play an active role in law enforcement efforts end up sitting as

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¹⁴ Penjelasan Pasal 5 ayat (2) UU No. 31 Tahun 2014 Tentang Perubahan Atas UU No. 13 Tahun 2003 Tentang Perlindungan Saksi Dan Korban
¹⁵ Krisna Harahap, Pemberantasan Korupsi Jalan Tiada Ujung, PT.Grafitri, Bandung, 2006
prisoners (suspects/defendants). The government, on behalf of the state and the law, should provide protection and assistance to people who play an active role in law enforcement efforts by disclosing facts to law enforcement or the public by becoming a whistleblower or witness to the reporting. However, according to the author, legal protection to witnesses or reporters must also be given selectively and carried out with the principle of prudence. The reason is that the application of the principle of immunity to the reporter (reporting witness) can also be misused by the reporter who does not have good faith in the report he has submitted to the investigator and or LPSK.

Problems arise here, among others: whether to whistleblowers or reporters who have provided information to investigators and or to the Witness and Victim Protection Agency (LPSK) then conduct a press conference so that the public knows the alleged crime committed by a person or public official? What happens if the report from the reporter is not true or is not proven while the reported person has already tainted his good name? Can the witness or reporter still be called a whistleblower and must be given legal protection, namely the application of the principle of immunity? In principle, such a witness or reporter can still be called a whistleblower, only the principle of immunity cannot be applied to him. For an entrepreneur (contractor) and public official, the trust factor is an important factor in carrying out his business (business world) or for public officials it is a track record in occupying a position (position promotion). The report of an alleged criminal act certainly disturbs the trust or suspicion of the public (public) on the performance of entrepreneurs and or public officials. The law is monodual, meaning that the law protects the interests of everyone. A legal action against a person suspected of committing a criminal act is required to respect the principle of presumption or innocence, which is based on sufficient initial evidence, which means at least 2 (two) valid pieces of evidence.

The government in the name of the law is obliged to provide protection, both legal protection and special protection to witnesses or reporters who are whistleblowers. It's ironic if the whistleblower ends up sitting down or becomes a prisoner (suspect/defendant). LPSK as the spirit or soul of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims who give a proper or inappropriate assessment to the witness or the reporter is given protection. Based on the explanation of Article 10 paragraph 1 of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims who do not receive legal protection are witnesses who testify not in good faith, including providing false information, perjury, and conspiracy.

 Appropriately, the reported party also respects ethics in submitting his report on allegations of abuse of authority by public officials. The report will

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16 Pasal 10 ayat 1 UU No. 31 Tahun 2014 tentang Perubahan atas UU No. 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban
not become a character assassination or become a public commodity so that
the author is of the opinion and at the same time a criticism of Article 10
paragraph (1) of Law no. 31 of 2014 concerning Amendments to Law no. 13
of 2006 concerning the Protection of Witnesses and Victims, that the reporter
must submit his/her report in a polite and ethical manner. This means: there
are limits to rights and obligations that must be known and adhered to by the
reporter himself so that in the author's opinion, legal protection is not required
to be given to witnesses or reporters who are not carried out in good faith.
Cases like this need attention in the application of Law no. 31 of 2014
concerning Amendments to Law no. 13 of 2006 concerning the Protection of
Witnesses and Victims or their implementing regulations.

Witnesses or reporters based on Law no. 31 of 2014 concerning
Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses
and Victims must carry out a number of conditions in the form of a willingness
to give testimony in the judicial process, obey the rules regarding their safety,
not relate in any way to anyone other than with the approval of LPSK, not
notify anyone about their whereabouts being protected by LPSK and other
matters. other things deemed necessary by LPSK.

Legal protection not to divulge the name of the reporter or the obligation
to keep the name of the reporter (identity of the reporter) secret occurs when
the reporter conveys the facts of a crime to the investigator (for general
crimes) or other special investigators. The investigator immediately makes a
report and if there is sufficient evidence, including the testimony of the
witness (the reporter), the case file will be investigated. The filing of the case
file is technically in line with the provisions of the Criminal Procedure Code,
the witness as the reporter is taken an oath before giving his statement with a
disguised identity.

Article 9 of Law no. 31 of 2014 concerning Amendments to Law no. 13
of 2006 concerning the Protection of Witnesses and Victims can be a technical
procedure in the examination of witnesses whose identities are kept secret in
court. Article 9 of Law no. 31 of 2014 concerning Amendments to Law no. 13
of 2006 concerning the Protection of Witnesses and Victims regulates:

(1) Witnesses and/or victims who feel that they are in a very big
threat with the approval of the judge can testify without being
present in person at the court where the case is being examined.
(2) The witness and/or victim as referred to in paragraph (1) may
provide their written testimony which is submitted before the
authorized official and affix their signature to the official report
containing the testimony.
(3) Witnesses and/or victims as referred to in paragraph (1) can
also hear their testimonies directly through electronic means
accompanied by authorized officials.
The explanation of this Article 9 in paragraph (1) that what is meant by a very large threat is a threat that causes witnesses and/or victims to be unable to give their testimonies. The explanation of paragraph (2) that what is meant by an authorized official is an investigator in accordance with the provisions of the legislation. The explanation of paragraph (3) that the presence of this official is to ensure that witnesses and or victims provide information.

The examination of witnesses at trial can be given remotely through audio-visual communication means: giving information during examinations in court without meeting the defendant face-to-face. Psychological (psychological) factors greatly influence the witness in giving his testimony in front of the trial and face to face.

**Ad. 2. Special Protection for Whistleblower**

Special protection for witnesses and/or victims as revealers of facts (whistleblowers) is given by the state to overcome the possibility of a very large threat. Reporting witnesses and or victims of criminal acts need special protection because not all of them face threats.

KAPOLRI Regulation No. 17 of 2005 concerning Procedures for Special Protection of Whistleblowers and Witnesses, it is stated that protection for whistleblowers (witnesses, victims, reporters) is special:
1. Protection of personal safety from physical and mental threats;
2. Protection of property;
3. Protection in the form of confidentiality and identity disguise;
4. Giving information without face to face (confrontation) with the suspect or defendant at every level of examination;

Special protection according to Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims is contained in Article 5. This special protection includes protection of the assets of the complainant and even his family.

Article 5 of Law No. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, such as the right to obtain protection for the safety of their personal, family and property and to be free from threats related to the testimony they will, are currently or have given. It is appropriate to carry out a broader interpretation of the definition of a witness as referred to in this law in its implementing regulations so that the definition of a witness in Article 1 point 1 also includes the reporter.

Article 5 of Law no. 13 of 2006 confirms that witnesses and victims have the right to obtain protection for personal security, threats, participate in determining the form of protection and provide information without pressure and others. Furthermore, in paragraph (2) Article 5 that the rights as referred to in paragraph (1) are granted to Witnesses and/or Victims of criminal acts in certain cases in accordance with the LPSK Decree.
Especially for victims (victim witnesses; reporters) in violation of Human Rights, apart from being entitled to the rights as referred to in Article 5, they are also entitled to: medical assistance and psychological rehabilitation assistance. Elucidation of Article 6 letter b what is meant by social psychological rehabilitation assistance is “assistance provided by psychologists to victims who suffer from trauma or other mental problems to restore the condition of the victim's mental state.”

Protection and rights of witnesses and or victims as regulated in Chapter II Article 5 of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims confirms that:

(1) A Witness and Victim are entitled to:
   a. Obtain protection for the safety of his personal, family, and property, and be free from threats related to the testimony that he will, is currently, or has given;
   b. Participate in the process of selecting and finding forms of security protection and support;
   c. Provide information without pressure;
   d. Got a translator
   e. Free from entangled questions;
   f. Get information about the progress of the case
   g. Obtain information about court decisions;
   h. Knowing in case the convict is released;
   i. His identity is kept confidential;
   j. Get a new identity;
   k. Get a temporary residence;
   l. Get a new place of residence;
   m. Obtain reimbursement of transportation costs as needed;
   n. Get legal advice;
   o. Obtain temporary living expenses assistance until the Protection deadline expires; and/or
   p. Get assistance.

(2) The rights as referred to in paragraph (1) are granted to Witnesses and/or Victims of criminal acts in certain cases in accordance with the LPSK’s decision

Article 6 of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims provides restrictions in terms of providing medical assistance and psycho-social rehabilitation which can only be given to victims of gross human rights violations. Based on this law, LPSK may decide to provide medical assistance and psycho-social rehabilitation to victims of crimes other than witnesses and victims of gross human rights violations. This Article 16 is disparate in nature because the provision of medical assistance and psycho-social rehabilitation assistance is only to victims of serious human rights violations, victims of terrorism crimes, victims of trafficking in persons, victims of crimes of torture,
victims of violent crimes, sexual abuse, and victims of severe abuse, so that it is not in line with the non-discriminatory principle as referred to in Article 3 of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims. Witnesses or victims in other general crimes such as domestic violence, persecution and so on are not the least bit traumatized and psychological pressures as a result of a criminal act. The witness who became the victim of course also needed medical help in the form of physiotherapy to heal things that were traumatic.

Article 7 of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, concerning the obligation for the state to provide compensation or restitution for victims of gross human rights violations and criminal acts of terrorism. In this law, there are no provisions governing sanctions if the state does not provide compensation or the perpetrator does not provide restitution for victims of gross human rights violations and criminal acts of terrorism. This condition will give rise to other crimes, namely omission or willful negligence. Another problem that arises is that the decision regarding compensation and restitution is given by the court which is then regulated in a Government Regulation. The standard or benchmark for the amount of compensation and restitution is not yet clear and until now there are no regulations or provisions as a reference for the provision of compensation and restitution. Issuance of a Government Regulation to regulate the provision of compensation and restitution is necessary.

Article 8 of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, regarding the protection that was only carried out when the investigation began. This provision provides an opportunity for the reporter to still receive threats because terror and criminalization have generally occurred since reporting. Protection should be carried out from the time of reporting so that there is free time between reporting and investigation. Paragraph 2 explains that "under certain circumstances, Protection can be given immediately after the application is submitted to the LPSK”.

As mentioned in the previous description, the provision of protection to whistleblowers is normative in this law, namely in determining when the whistleblower gets legal protection and special protection or when the whistleblower gets legal protection and special protection. Article 10 paragraph (1) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims applies the principle of immunity for the whistleblower for reports or testimonies that will be, are being or have been given. The provision of legal protection and special protection is only aimed at witnesses, victims and reporters who provide information in good faith. This means that witnesses, victims and reporters must know their rights and obligations after providing/disclosing a fact to investigators and/or LPSK to obtain legal protection. Whistleblowers are
required to have legal ethics, namely after submitting reports or revealing facts to investigators and or LPSK.

The whistleblower may not disclose an allegation of a crime committed by a person to the public so that the public (the public) knows about it while the alleged crime is not necessarily true or proven in court. The principle of immunity as regulated in Article 10 paragraph (1) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims is a deviation from general legal principles, namely the principle of presumption or innocence. Witnesses or Whistleblowers here can directly report someone based on the facts they have without the need to consider whether the report is true or not, proven or not in court.

It is important to emphasize that legal protection and special protection are only aimed at revealing facts who have legal ethics, that is, they must be carried out in good faith. The precautionary principle in applying the principle of immunity as contained in Article 10 paragraph (1) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims is very important to consider in providing legal protection for those who disclose facts (so as not to cause new legal problems, namely the reported harm to other people's names. In the explanation of Article 10 what is meant by "giving testimony not in good faith" including providing false information, perjury, and conspiracy.

Likewise, the application of the concept of protection of cooperating person in Article 10 paragraph (2) of Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, to be carried out carefully and selectively. The goal is to avoid a disparity in punishment that is too glaring for perpetrators who commit almost the same crime as well as to provide a deterrent effect in society. Benchmarks or criteria must be clear so that judging an actor who is also a witness (crown witness) is considered cooperative with law enforcement officers, it must be done with a very selective assessment.

Legal protection as referred to in Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims is not given to reporters who provide information not in good faith (Article 10 paragraph 3).

C. Conclusion

The role of the whistleblower is very important in uncovering a case, because many cases are not revealed because there is no one who reports or becomes a whistleblower. A normative juridical whistleblower gets strict protection in Article 33 of the United Nations Convention Against Corruption (UNCAC), which has been ratified through Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against
Corruption, 2003 (United Nations Convention Against Corruption, 2003). Even though currently there is an LPSK that carries out the task of providing protection for witnesses and victims, LPSK has not reached out to whistleblowers. The protection given to whistleblowers is only to ease the punishment if the whistleblower is also involved in the reported case. The form of protection given to the whistleblower is legal protection and Special protection, legal protection can be in the form of a prohibition for anyone to divulge the name of the reporter or the obligation to keep the name of the reporter accompanied by criminal threats against the violation, cannot be sued in a civil manner or criminally prosecuted by the whistleblowers (whistleb). Special protection is carried out in accordance with the Regulation of the National Police Chief No. 17 of 2005 concerning Procedures for Special Protection of Whistleblowers and Witnesses Protection of personal security from physical and mental threats; Protection of property; Protection in the form of confidentiality and disguise of identity; Providing information without meeting face to face at each level of examination; In addition, protection is given with the permission of the LPSK.

D. Suggestions

The need for revision of the Criminal Procedure Code and Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, so that whistleblowers are included as one that should be protected both criminal charges and civil claims so that no more whistleblowers are reported as defamation and so on. A Whistleblower should be legally protected, because this has been explicitly regulated in Article 33 of the United Nations Convention Against Corruption (UNCAC). This convention has been ratified by Indonesia through Law No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003).

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