Additional Legal Protection for Corruption Whistleblowers

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Corruption represents a breach of the economic rights of society, elevating it beyond mere criminality to the status of an extraordinary offense. Therefore, safeguarding the rights of individuals who report instances of corruption is necessary to ensure their protection. As law enforcement officers, Prosecutors hold the authority to provide legal protection to whistleblowers of corruption, as stipulated in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims (LPSK). Among the various legal protections provided to whistleblowers, maintaining the confidentiality of their identity stands out as the utmost priority. This protection is crucial to ensure effective law enforcement. Hence, safeguarding whistleblowers is important, and to formalize this, law enforcement should be empowered to provide them with the necessary protection.

A. Introduction

Corruption has long cast a dark shadow over the lives of people worldwide. It is a pervasive issue faced by many countries, diverting significant attention and impeding development. Undoubtedly, corruption poses a serious and challenging phenomenon to address. Muhammad Hatta said that corruption tends to be entrenched or has become part of the culture of the Indonesian nation. This indicates that corruption has been ingrained in Indonesia for a long time, as evidenced by the persistently high levels of corruption in the country. Data from the Transparency International
Corruption Perception Index\(^1\) in 2022 confirm that Indonesia has a score of 34/100 and ranks 110th out of the 180 countries surveyed.

Corruption is an extraordinary offense (Extra Ordinary Crime), requiring extraordinary\(^2\) measures for its eradication. One such measure is the significant role of the law in exerting control over state activities, given that corruption is a systematic/structural/organized crime intertwined with authority.\(^3\) This pervasive issue of corruption has become a global phenomenon, with far-reaching impacts on various areas of life, especially in economics and public finance.\(^4\)

Various efforts have been made by the government, one of which is formulating legal policies related to the eradication of corruption. In general, criminal law functions to regulate and organize public life so that public order can be created and maintained. Advancements in the legal sector should align with and cater to evolving legal awareness among the people, progressing toward modernization in tandem with advancements in all fields. This ensures that legal frameworks are established and upheld, fostering order and certainty essential for bolstering national unity and serving as a supportive mechanism for development.\(^5\)

After the issuance of a regulation governing the eradication of criminal acts of corruption, it is now clear what the procedures and stages are in the process of eradicating a criminal act of corruption. However, other steps can also be used, such as researching matters closely related to the case, including examining credible witnesses and relevant parties, including whistleblowers.

The presence of a whistleblower in cases of corruption is invaluable, and investigators should recognize and be grateful for it. The involvement of a whistleblower streamlines and enhances the efficiency of the investigation process, as the information provided is often reliable. Reporting witnesses play a pivotal role in elucidating legal facts, thereby contributing to the reduction of crime rates. Corruption is categorized as a systematic crime, typically involving multiple individuals or entities connected through direct or indirect means. This clandestine nature often poses challenges for law enforcers in uncovering the truth.

In several cases, prosecutors encounter obstacles or reach dead ends in corruption investigations due to the challenge of obtaining accurate evidence. Moreover, the prospect of a whistleblower coming forward is often slim, given

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\(^2\) Lilik Mulyadi, *Corruption Crimes in Indonesia, Normative, Theoretical, Practice and Problems*, Ed. 1, cet (Bandung, 2007).


\(^5\) Adam Chazawi, “Criminal Law Lessons” (Jakarta, 2008), 15.
the prevalent negative perceptions associated with whistleblowing and its potential repercussions. Hence, it is imperative for prosecutors to provide protection in accordance with applicable law, ensuring that whistleblowers do not feel intimidated or threatened when giving their testimony. The presence of whistleblowers in cases of corruption is crucial for prosecutors. It must be acknowledged that much of the information regarding criminal acts of corruption stems from the public. 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.6 This underscores the significance of whistleblowers in confirming criminal actions. Nevertheless, it should be remembered that the power of the whistleblowing system will depend on the participation of whistleblowers. This article was written using a normative analysis method to examine the provisions for protecting corruption whistleblowers.

B. Discussion

1. Protection of whistleblowers in the investigation of corruption crimes

The presence of an informant is an important element that determines the success of uncovering a criminal case of corruption. However, the disclosure of corruption cases by whistleblowers does not always go smoothly because many witnesses are afraid to report the incidents they have witnessed. Additionally, they often face various threats and terror, jeopardizing their safety and that of their families. This has greatly influenced the lack of community participation in law enforcement. The lack of legal knowledge among the public is actually inseparable from the lack of socialization regarding applicable laws and regulations concerning the rights of whistleblowers. Relying solely on LPSK or prosecutors for whistleblower protection is insufficient. Given the essential role of whistleblowers in criminal investigations, protection should also encompass general investigators, including the police.

Following the report of an alleged criminal act of corruption, the whistleblower should be entitled to protection, as it is common for them to face significant threats and intimidation. In principle, the protection given to a whistleblower is a form of respect and appreciation for their contribution in the process of disclosing a case. Protection for whistleblowers is crucial. Numerous recent incidents serve as examples illustrating the vital role of whistleblowers.


whistleblowers in exposing criminal activities. Recognizing the importance of whistleblowers in disclosing crimes, it is imperative to provide them with legal, physical, and psychological protection.

Reksodiputro defined an informant as a whistleblower or complainant of information that is then leaked. This information is classified as confidential within its respective environment.\(^8\) According to Reksodiputro, this means that the reporter is a secret leaker who is generally a public enemy for rats in red ties. Whistleblowing is considered one of the most effective methods for stopping illegal or corrupt activities within organizations. It is also a powerful mechanism for bringing more ethical climate in public and private institutions.\(^9\)

Usually, corruptors will do whatever they can to thwart the efforts of the reporter regarding their criminal actions. Therefore, efforts to protect whistleblowers is an effective way to ensure effective “whistle blowing.”

Protection for whistleblowers must involve providing their rights in the criminal justice process based on existing laws. This protection is a form of appreciation and respect for whistleblowers in disclosing a case of corruption. In Indonesia, the implementation of legal protection for witnesses and reporters is legally stated in Law Number 13 of 2006 concerning Protection of Witnesses and Victims (LPSK). The forerunner to the birth of this law was because the role of witnesses, victims, and reporters was very central and had great urgency in finding bright spots in a criminal case. Currently, whistleblowers are receiving special attention, both from the government and other public sectors\(^10\). Even Baljija and Min’s research results reveal the following:

To that end, international organizations like the World Bank, the United Nations, the European Commission, and the Council of Europe, among others, have reaffirmed the significance of whistleblowing as a tool, mechanism, system, and activity for preventing wrongdoings in the public sectors.\(^11\)

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\(^8\) Mardjono Reksodiputro, Secret Leakers/Whistleblowers in Tackling Crime in Indonesia, p. 13.
Based on Article 1 number 8 of LPSK as amended by Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2016 states that protection is all efforts to fulfill rights and provides assistance to provide a sense of security to witnesses and/or victims, which must be implemented by LPSK or other institutions in accordance with the provisions of this law.

The protection referred to in this law is stated in Article 5 paragraph (2) of Law Number 31 of 2014, and the rights obtained include the following:

a. Obtain protection for personal security, family, and property and be free from threats relating to the testimony that will be, is being, or has been given;

b. Participate in the process of selecting and determining forms of security protection and support;

c. Provide information without pressure;

d. Get a translator;

e. Free from ensnaring questions;

f. Obtain information regarding case developments;

g. Obtain information regarding court decisions;

h. Obtain information in the event that the convict is released;

i. Identity kept secret;

j. Get a new identity;

k. Get temporary residence;

l. Get a new residence;

m. Obtain reimbursement for transportation costs according to needs;

n. Obtain legal advice;

o. Obtain temporary living expense assistance until the protection period expires; and/or

p. Get assistance.

The provisions in this article provide rights that can be obtained by a reporter, and this is clearly contained in the general explanation of Law Number 31 of 2014, which states that apart from witnesses and victims, there are also other parties who also have a big contribution in terms of uncovering a particular alleged criminal act, including whistleblowers; hence, they must be given protection.
2. Urgency of Whistleblower Protection in Law Enforcement

In handling corruption cases, the prosecutor serves as both investigator and public prosecutor. It’s role in eradicating criminal acts of corruption in a penal manner is very dominant, meaning that in a penal manner, it is the eradication of criminal acts that use criminal law tools in handling them.\(^{12}\) The presence of Corruption Crime Reporters is a breath of fresh air for the Prosecutor’s Office. Sometimes, difficulties arise when investigators feel that they cannot find any bright spots in uncovering a criminal case of corruption because the evidence and information of the parties involved are considered lacking. However, from various perspectives, there are also quite a few whistleblowers who feel threatened and afraid to report a criminal act of corruption.

Whistleblowers have a very important role in eradicating corruption. However, these whistleblowers often face threats or attacks from other parties who causing them to not want to report criminal acts of corruption.\(^{13}\) Therefore, they are very important to protect.

Protection is crucial for those reporting corruption from the start of the investigation, and the whistleblowing system is essential for the detection and prevention of corruption.\(^{14}\) Whistleblowers take significant personal risks in reporting bribery and other crimes and misconduct to law enforcement authorities. Supporting and advising whistleblowers during the time they are deciding whether to make a report should help to instill confidence in the system and encourage reporting.\(^{15}\) Previously, every reporter had to focus on existing procedures to make a report because it is always necessary to follow the right procedure when reporting wrongdoings and to look for the policy of the institution. Investigations conducted in criminal acts of corruption are


generally performed by the Prosecutor’s Office; therefore, it is hoped that the office can provide legal protection for those reporting criminal acts of corruption. In this case, the author is prompted to ponder whether the Prosecutor’s Office possesses the authority to provide protection for whistleblowers of criminal acts of corruption, considering that protection for whistleblowers is typically overseen by the Witness and Victim Protection Agency.

Theoretically, forms of legal protection are divided into two forms, namely, preventive protection and repressive protection. In preventive legal protection, the public is given the opportunity to submit objections or opinions before a government decision takes definitive form. This means that preventive legal protection aims to prevent disputes from occurring. Meanwhile, repressive protection aims to resolve. Concerning preventive measures in safeguarding reporting witnesses, it is imperative to ensure that they are granted their rights in accordance with statutory regulations, thereby mitigating potential harm before it occurs. In this case, from the investigation stage to the decision, the reporting witness is given his rights according to the provisions.

In resolving a corruption case, the investigating prosecutor forms a team to unite perspectives in fulfilling the rights of reporting witnesses, starting from keeping the identity of the reporter confidential, providing legal advice, to assisting in trials. This is done so that the reporting witness does not feel threatened when providing information. Based on the form of protection provided by the public prosecutor, a form of preventive protection has been fulfilled with the aim of preventing criminalization of reporting witnesses.

Meanwhile, repressive protection underscores the provision of protection when witnesses encounter intimidation from parties who perceive themselves as disadvantaged due to reporting corruption cases. In other words, after a witness experiences intimidation or physical harm, the witness reports it to law enforcement. Consequently, law enforcement will process the case.

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Table 1. Whistleblower rights

<table>
<thead>
<tr>
<th>No.</th>
<th>Whistleblower rights</th>
<th>Yes</th>
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<tbody>
<tr>
<td>1.</td>
<td>Provide information without pressure</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Get information about case developments</td>
<td>√</td>
<td></td>
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<tr>
<td>3.</td>
<td>Keep the identity of the reporter confidential</td>
<td>√</td>
<td></td>
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<tr>
<td>4.</td>
<td>Free from ensnaring questions</td>
<td>√</td>
<td></td>
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<tr>
<td>5.</td>
<td>Obtain information regarding court decisions</td>
<td>√</td>
<td></td>
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<tr>
<td>6.</td>
<td>Obtain information in the event that the convict is released</td>
<td>√</td>
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<tr>
<td>7.</td>
<td>Get temporary residence</td>
<td>√</td>
<td></td>
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<tr>
<td>8.</td>
<td>Get protection for personal security</td>
<td></td>
<td>√</td>
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<tr>
<td>9.</td>
<td>Obtain reimbursement for transportation costs</td>
<td>√</td>
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<tr>
<td>10.</td>
<td>Get legal advice</td>
<td>√</td>
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<tr>
<td>11.</td>
<td>Get legal assistance</td>
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</tbody>
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Data Source: Special Crimes Division of the Lampung High Prosecutor’s Office, 2023

The research results confirm that some of the rights of those reporting corruption have been almost completely fulfilled. This cannot be separated from the role of the investigating prosecutor who strictly protects the rights of the reporter.

Some of the rights of whistleblowers that have been fulfilled as attached in the Table 1 are a form of protection from the Prosecutor’s Office. If certain rights specified in statutory regulations are not granted to the whistleblower, then it may be attributed to various reasons, including the absence of a whistleblower who perceives a serious level of threat. Protection for whistleblowers is the duty and obligation of the state in law enforcement efforts.\(^\text{18}\)

Furthermore, regarding the right to obtain reimbursement for transportation costs, this provision only exists at the trial stage, so that the prosecutor himself does not need to fulfill the rights of the reporter and reimbursement for transportation costs. From the investigation stage, the role of the investigating prosecutor is very important in conveying the rights of the

reporter. Additionally, the prosecutor does not only focus on the complainant but also has an impact on the complainant’s family. In another side, a whistleblower must also know about the institution that holds the authority to reveal some cases and give them protection. Its is important as it is related to the report process, ensuring its accuracy and efficiency.\textsuperscript{19}

C. Conclusion

In Indonesia, the embodiment of legal protection for witnesses and reporters according to legal norms is outlined in LPSK. However, if we talk specifically about legal protection for whistleblowers of corruption, it is contained in Part Four concerning Legal Protection in Government Regulation Number 43 of 2018 in Article 12, which explains the rights of whistleblowers of criminal acts of corruption to obtain legal protection. If the understanding of legal protection for whistleblowers can also be conducted by prosecutors thoroughly, then there is no need to heavily rely on LPSK to provide protection, and it can facilitate the process of law enforcement for criminal acts of corruption. So far, dependence on LPSK to protect witnesses has hampered the process of law enforcement on corruption. This also provides an opportunity for people who want to make complaints, alleviating concerns about the challenges associated with obtaining protection.

Prosecutors, as law enforcement officers, also possess the authority to provide legal protection to whistleblowers of criminal acts of corruption, as mandated by the specific law, LPSK. Among the various legal protections provided to whistleblowers in corruption cases, maintaining the confidentiality of the whistleblower’s identity is of utmost importance. Based on field observations, the legal protection provided to whistleblowers in corruption cases is in the form of giving information without pressure, getting information about the progress of the case, keeping the identity of the reporter confidential, being free from ensnaring questions, getting information about court decisions, obtaining information regarding the convict being released, acquiring a temporary residence, receiving protection for personal security, and getting legal advice and assistance.

D. Suggestion

In the future, recognizing the critical importance of whistleblower protection, it is imperative that not only LPSK and prosecutors have the authority in this regard. Investigators, including police officers, should also be empowered with such rights to enhance law enforcement efforts.

References


195–212.