



Legal Protection for Whistleblowers in the Perspective of the Law on the Protection of Witnesses and Victims in Indonesia

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Abstract—*The current development of the justice system in Indonesia is not only oriented towards perpetrators, but also oriented towards the interests of Witnesses and Victims. The existence of Witnesses and Victims is very decisive in disclosing the existence of a crime in the court process. A whistleblower is a person who can provide information related to a crime even though he has not heard it himself, he has not seen it himself, and he has not experienced it himself, as long as that person's information relates to the existence of a crime, so that they need to be given protection. The purpose of this research is as a legal effort that the whistleblowers, both from within and from outside the institution, receive legal attention and protection. This study uses a qualitative descriptive method, with a normative juridical approach. In order to obtain valid data, interviews and FGDs were conducted with representatives of the Witness and Victim Protection Agency (LPSK), the Financial Transaction Analysis Reporting Center (PPATK), and academics. The result is that the Law on the Protection of Witnesses and Victims for whistleblowers is very important, considering that as a party that can be referred to as the entrance to the opening of a violation/crime, especially in the financial sector, because this field is very vulnerable and risky in disclosing cases. Therefore, the legality for whistleblowers will be obtained more clearly, definitely and legally comprehensively, in order to create a better law enforcement in Indonesia.*

Keywords—*Legal Protection; Whistleblowers; Witnesses; Victim*

I. INTRODUCTION

The results of the Indonesian Fraud Survey conducted by the Association of Certified Fraud Examiners (ACFE) in 2019 showed that the whistleblower system was still seen as a fairly effective fraud prevention tool with the largest percentage of 22.6%. For this reason, whistleblowers must be protected so that they actively participate and are not afraid to submit reports.[1]

Until now there is no legislation that specifically regulates the existence of whistleblowers in Indonesia. The arrangement is implicitly enshrined in Law no. 13 of 2006 as amended by Law Number 31 of 2014 concerning Protection of Witnesses and Victims. Another regulation is the Circular Letter of the Supreme Court Number 4 of 2011 concerning the Treatment of Criminal Whistleblowers (whistleblowers) and Perpetrator Witnesses who work together (justice collaborators). The two regulations in their implementation are still unable to protect the existence of whistleblowers and justice collaborators [2]

Organizational commitment can have a positive effect on legal protection and financial incentives on whistleblowing intention, while organizational commitment cannot have a negative effect on whistleblowing intention [3].

The existence of a whistleblower to uncover criminal events that pose a risk to his safety has not been specifically regulated in the legal system in Indonesia.[4].

Factors that encourage being a whistleblower include social justice and professional ethics, morals, monetary rewards, peer encouragement, law and policy, impact on the organization and impact on society.[5]

The results of the study revealed that, firstly, there are several rules governing the Whistle Blower and Justice Collaborator in the Criminal Justice System, but there is no room for regulation in the Criminal Code (KUHP). Second, the urgency and existence of Whistleblowers and Justice Collaborators can be found through the operation of the Criminal Justice System both in Investigation, Prosecution, Judiciary and in the implementation of decisions.[6].

Legal protection for whistleblowers in Indonesia is still relatively weak and still needs improvement so that it becomes a stronger legal decision. Legal protection is

considered weak, legal protection variable has no influence on auditors to report fraud or crime. Management is expected to implement and use a good system in reporting, because this can make management performance better.[7]



Figure 1.1 Records of LPSK for the Protection of Corruption Crimes 2018-2020
Source: LPSK, 2022

In Figure 1.1 it can be seen that the protection data in financial crimes (corruption) shows the highest graph, which is 95 people, then 47 witnesses, 22 families, 10 experts, and 9 perpetrator witnesses.

From the description of the background above, it shows that legal protection is very important to the whistleblowers, to the whistleblowers (whistleblowers), until now it has not been explicitly stated in a special regulation, especially the whistleblowers and justice collaborators, so that they can be protected to the maximum. Therefore the question in this study:

1. Why do whistleblowers need legal protection?
2. What is the form of adequate legal protection for whistleblowers?.

II. LITERATURE REVIEW

The Financial Services Authority continues to push the financial industry to be healthier, so continuous participation is needed between the government and the community. In Indonesia, there has been a decline in public confidence in the economic and financial sectors since the 2008 world financial crisis.

The trust factor is important to ensure the continuity of financial service institutions. This is realized by the Indonesian Financial Services Authority (OJK). OJK relaunched the system for reporting violations by OJK employees or a system for reporting violations that can be easily accessed by the public.

A. The presence of a Whistleblower

Okafor, et al [8] in the context of developing countries, whistleblowing is supported as an accountability mechanism, but it is full of interventions, so it presents high risks for whistleblowers and regulators, including the risk of loss of life, and the institution is full of operational challenges. As a result, whistleblower legal awareness, operational challenges and an institutional environment conducive to

punishment are less effective against in presence of whistleblowers in Nigeria. The current scientific depiction of a person as a fearless truth teller who is completely independent of the organization. The empirical data collected and using Judith Butler's theory are contrary to existing understanding, full attachment to organizations and professions shapes a person as a reporter, consciously and autonomously. The following also highlights the importance of practical and material support for this important figure in society; until now the reporter is idealized as an extraordinary hero rather than a real human who needs help, especially protection by formal organizations.

Whistleblowers are often in a difficult position, on the one hand it would be better because they can reveal a violation, but on the other hand the result of their disclosure often makes them depressed. The pressure given by managers to employees to take actions that are not in accordance with company regulations, causes tension that occurs within employees, because the orders given directly by managers are not in accordance with the values or morals held.[9]

B. Legal Protection to Whistleblowers

Anne [10] OJK developed the most reliable encryption to secure the identity of the reporter and his/her own report. In addition, building anti-fraud functions, strategies, and systems; gratification control program; and running the WBS effectively are the three keys to its implementation. OJK also invites various outside parties to act as whistle blowers, such as financial service institutions, industry professionals, supporting professions, consumers, government, legislative institutions, and work partners.

There are several rules governing the Whistle Blower and Justice Collaborator in the Criminal Justice System, but there is no room for regulation in the Criminal Code (KUHP). Second, the urgency and existence of the Whistleblower and Justice Collaborator can be found through the operation of the Criminal Justice System both in Investigation, Prosecution, Judiciary and in the implementation of decisions [11].

Kenny [12] reporting using elements of organizational legitimacy theory. In recognizing the negative correlation between the actions of the organization and the complainant, it becomes clear that the continued legitimacy of the organization requires that the complainant be illegitimate. This helps explain the blacklisting of whistleblowers and their slander that resulted in the destruction of their careers and reputations. Only special protection laws can provide insurance for their careers. who is the first to disclose or report a criminal act or act that is considered illegal in his place of work or other people, to the internal authority of the organization or to the public such as the mass media or public monitoring agencies with the aim of uncovering known crimes or irregularities.

Vania [13] subjects experiencing high level of obedience pressure and having higher trust to leader are more likely to perform whistleblowing action

Zhang [14] argues that ethical leadership is positively related to internal reporting by subordinates. Zhang controlled for the ethical climate and found that collective moral

potential as a component of the ethical environment, and employees' personal identification with their supervisors fully mediates the relationship between ethical leadership and internal complaints.

The right form of legal protection for whistle blowers in the criminal justice system in Indonesia is repressive and preventive. Repressive protection is in the form of activation of the Witness and Victim Protection Agency, while preventive protection is in the form of revisions to the stages of the criminal justice process in Indonesia and the formation of laws that specifically regulate legal protection for whistle blowers [14].

Nwoke [15] Corporate misconduct presents challenges to modern corporate governance, not least because they undermine healthy corporate culture and hinder economic growth. One way to disclose such violations is through a whistle-blowing mechanism. South Africa has taken steps to inculcate good whistle-blowing practices within its jurisdiction, a concept almost non-existent in Nigeria. This is due to the absence of a comprehensive law on whistle-blowing in this country, coupled with the lack of strong institutions needed to protect whistle-blowers. In the absence of a strong legal and institutional structure, whistle-blowing can be a powerful tool to strengthen strong and viable corporate governance mechanisms in Nigeria.

III. RESEARCH METHOD

This study uses a qualitative method through a formal juridical normative approach. For this reason, in order to obtain official information from parties who have the authority to enforce rules related to the protection of anyone as a whistleblower, both from internal institutions and external companies engaged in financial management.

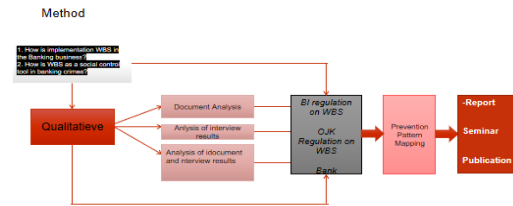
In obtaining the required data, both primary and secondary, which will be carried out, among others, by: FGD involving informants, namely representatives from PPA TK, LPSK representatives, and academics to explore the opinions/thoughts of the informants.

The results are analyzed using juridical, normative, and sociological analysis related to the enforcement of regulations regarding the legal protection of whistleblowers.

The results of interviews with several parties, namely PPA TK, LPSK, and academics, aim to obtain an overview that substantially about Whistleblowers. This is related to legal protection, so its existence is very important.

The FGDs were carried out by involving the same sources as the interviewees, but in this FGD, they were conducted to confirm what had been conveyed through the interviews, then compared to the time of the FGD. From there, conclusions can be drawn about the urgency of legal protection for whistleblowers, especially in financial companies.

For more details, it can be described in the following flow chart:



Data were obtained from several sources, namely documents of legislation, scientific journals, opinions of experts Data were obtained from several sources, namely documents of legislation, scientific journals, opinions of experts and authorities, and academics related to the topic of financial whistleblowers.

IV. RESULT AND DISCUSSION

The results of this study, through several processes of data collection both secondary and primary. Primary data was obtained through direct interviews with representatives of related institutions, academics. Likewise, through FGDs involving representatives from the Witness and Victim Protection Agency (LPSK), and academics, as well as observers of whistleblower issues

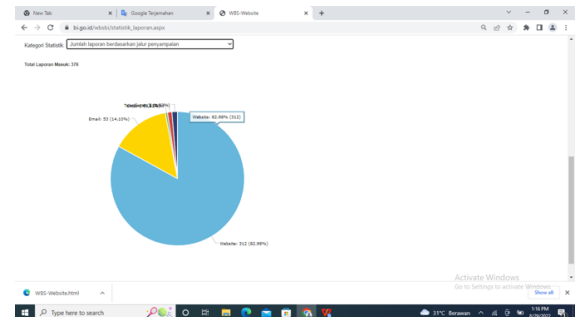


Figure 4.1: Number of reports by delivery channel Source: Bank Indonesia, 2021

Figure 4.1 shows the number of reports through the submission channel via the website as many as 312 (82.98%), by email as many as 53 (14.10%), and by mail there are 4 (1.33%). The number of reports through the website is the most, this shows that many people have chosen a more efficient path in reporting a crime.

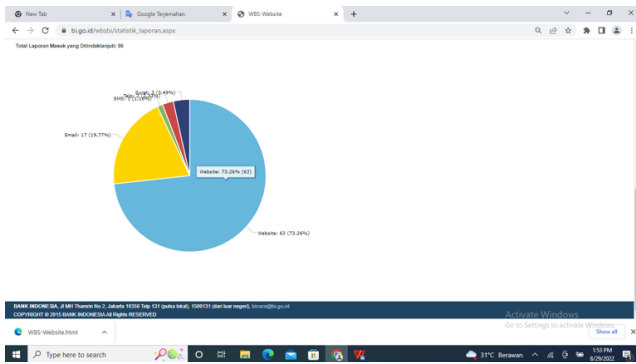


Figure 4.2: Number of follow-up reports by delivery channel
Source: Bank Indonesia, 2021.

Figure 4.2 shows that the number of reports from the public that have been followed up based on the submission route (reports) through the website is 63 (73.26%), by email as many as 53 (14.10%), and by mail as many as 5 (1.33%).

The FGD activities were carried out twice, and were confirmed by telephone with the resource persons, so it can be seen in the following table:

Table 4.1
Summary of Interview and FGD Results

No	Pertanyaan	Jawaban
1	What is the role of the whistleblower in disclosing crimes/deviations?	Able to uncover modes, methods, facts and plots of deviations, even crimes that lack evidence to be used as good initial information. Provide valid information, which can be used by law enforcement as an appropriate action to take.
2	What information can be reported?	Can direct, present data/criminal documents that have been removed or hidden. Can identify who is the perpetrator or inform anyone who is involved in the crime.
3	What are the types of protection against Whistleblowers?	In Law Number 31 of 2014 listed physical protection, legal protection, procedural rights, other protections. In addition, there is also Protection and Rewards based on Government Regulation Number 43 of 2018 which includes legal protection, premiums, and charters
4	What can be expected in the future regarding whistleblower protection?	There must be reform of laws, institutions, and increasing public awareness. Because if the state can't protect it, the community must be able to support it. In addition, technology reform is also due to the theory that there are 4 factors that influence law enforcement, namely: 1. The law 2. The community 3. The apparatus 4. Equipment or facilities Likewise, it is very necessary to protect whistleblowers that can

		be used to create new identities. In addition, the personal data law is also needed because so far we don't have a personal data law, so we can end up being threatened in cyberspace. So the protection of personal data is also necessary. Rights to be forgotten are also important because there are digital traces, so GDPR or the General Data Protection Regulation is important, especially for whistleblowers so that they do not experience victimization and criminalization from people who don't like them.
5	What are the obstacles to the protection of the whistleblower/whistleblower?	Identify the relationship (correlation) between the report submitted by the complainant and the counterclaim (report) from the reported party or other interested parties; Lack of understanding between agencies / APH in the application of Article 10 of Law 31/2014, often clashed with other laws and regulations (independence of investigations in the legal process), as a result the recommendations of LPSK on the application of the article are often ignored; Confidentiality of the identity of the reporter, the reported party is already known to the public (mass media reports or the reporter conveys it to the public through social media, etc.); The person reported is a superior or person who has power in the agency/organization (impact on work); Not yet optimally integrated WBS in K/L, in the prevention and eradication of corruption; Not many people, including ASN, understand the rights and protection as Whistleblowers; and Threats / countermeasures at work such as dismissal, transfer, demotion, demotion in the face of organizational staffing rules
6	Another serious obstacle?	1. The presence of physical threats: Physical attacks in the form of attempted murder and torture; as well as other forms. 2. Non-physical threats: Psychological disturbances, intimidation, terror (indirect threats via short , telephone, threats to use other parties that are considered to be able to disturb the reporter's psychology, and other things that affect the psyche of the reporter as a form of retaliation for the report). 3. Another disadvantage: Long

	time to fight for the report (the burden of proving and pushing the report that has been submitted becomes the burden of the reporter).
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Source: Processed, 2022

Table 4.1 above shows that legally stated in the Law on the Protection of Witnesses and Victims, it is sufficient, although there are still some provisions that need to be discussed at the level of policy makers. However, in general, in its implementation there are still technical obstacles and regulations. This is because there are several obstacles as listed in point 6.

The important role of the whistleblower (whistleblower) in disclosing irregularities/crimes: able to reveal the mode, method, facts, and plot of deviation/crime, even crime:

1. The lack of evidence to be used as a good initial information;
2. provide valid information, which law enforcers can take as appropriate action steps;
3. can identify anyone who is the perpetrator or inform anyone who is involved in the crime;
4. able to direct, present, data/documents of crimes that have been removed or hidden

v. CONCLUSION

Legally, the arrangements contained in the Law on the Protection of Witnesses and Victims, in particular for whistleblowers, are adequate, although there are still some provisions that need to be discussed at the policy-making level. The need for regulations and forms of regulation that better guarantee protection both legally, socially and related to the activities and personal of the reporter.

Provisions on whistleblowers in particular will be able to guarantee adequate certainty and protection, so that they can be used as the basis for legal protection for the public if they are going to be reporters.

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