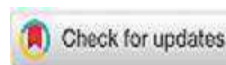


LEGAL PROTECTION FOR WHISTLEBLOWER IN CORRUPTION CRIME IN THE PRIVATE SECTOR



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Abstract

This research examines the legal protection for whistleblowers in corruption crimes in the private sector in Indonesia. The main focus of the research is to analyze the available legal framework its implementation, and corrupt practices in the private sector. The research method used is normative juridical with statutory, conceptual, and case approaches. Data is obtained through literature study and analysis of best practices from other countries, particularly the United States and the European Union. The results show that despite the existence of Law No. 31/2014 on Witness and Victim Protection, there are still many gaps in the implementation of whistleblower protection in the private sector. There are challenges such as the absence of specific regulations for the private sector, limited protection mechanisms, unsupportive organizational culture, and the risk of retaliation against whistleblowers. This research proposes several recommendations to strengthen the protection system, including the establishment of specific regulations for whistleblowing systems in the private sector, strengthening the role of the LPSK, developing inter-agency coordination mechanisms, and providing incentives for companies that implement effective reporting systems. The research conclusion emphasizes the importance of a comprehensive approach involving the government, private sector, and civil society in building an effective whistleblower protection system. The implications of this research are expected to contribute to the improvement of whistleblower protection policies and practices in efforts to eradicate corruption in the private sector in Indonesia.

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1. INTRODUCTION

Legal protection can be defined as a mechanism that authorizes individuals to exercise their human rights in an effort to protect their personal

interests. The Indonesian Constitution guarantees legal protection and assistance for every citizen, as stated in the 1945 Constitution Article 28D paragraph (1) and Article 28G paragraph (1). Both articles explicitly guarantee the fundamental rights of citizens, ranging from legal recognition to self-protection. Article 28D paragraph (1) emphasizes the principle of equality before the law by guaranteeing the right of every individual to recognition, guarantees, protection, legal assistance, and fair legal certainty. Meanwhile, Article 28G paragraph (1) provides broader protection, covering personal aspects such as personal security, family, honor, dignity, and property, and guarantees freedom from fear in exercising their human rights. This legal framework becomes very relevant in the context of whistleblower protection, given their crucial role as witnesses in revealing the truth of a case.

The importance of legal protection for whistleblowers is because those whose intention is to do good by exposing honesty can be accused of criminal offenses such as defamation or unpleasant actions, even though they actually act as parties who reveal fraud, especially for corruption crimes in the private sector.

Corruption has become a deep-rooted and systemic phenomenon in various sectors of life, and the private sector is no exception. While public and law enforcement attention is often focused on corruption in the public sector, corrupt practices in the private sector are no less alarming and have a significant impact on national economies.¹ The World Economic Forum estimates that the cost of corruption is equivalent to more than 5% of global GDP, with the private sector accounting for a substantial portion of this figure.²

In an effort to eradicate corruption in the private sector, the role of whistleblowers is very crucial. A whistleblower is an individual who has access to information about a violation and chooses to report the violation to

¹ *Transparency International*. 2023. "Corruption Perceptions Index 2022." Berlin: *Transparency International*.

² *World Economic Forum*. 2022. "The Global Risks Report 2022, 17th Edition." Geneva: *World Economic Forum*.

the appropriate authorities.³ The existence of whistleblowers has proven effective in uncovering various cases of major corruption, both at the national and international levels.⁴ However, the whistleblower's position is often in a dilemma and vulnerable to various forms of threats, intimidation, and retaliation.⁵

The complexity of whistleblower issues in the private sector is increasing given the special characteristics of this sector, such as strict organizational hierarchy, loyalty to the company, economic dependence, and the potential for blacklisting in related industries. Unlike the public sector, which has various legal instruments to protect whistleblowers, legal protection for whistleblowers in the private sector still faces various obstacles and limitations.⁶

In Indonesia, the legal framework related to whistleblower protection is still not comprehensive, especially in the context of the private sector. Law No. 31/2014 on the Amendment to Law No. 13/2006 on Witness and Victim Protection has indeed provided a foundation for whistleblower protection, but its implementation in the context of the private sector still faces various challenges. This is exacerbated by the absence of specific regulations governing whistleblowing system mechanisms in the private sector along with guarantees of legal protection.

The urgency of discussing legal protection for whistleblowers in corruption crimes in the private sector is increasing along with the growing complexity of business transactions and the increasingly sophisticated modus operandi of corruption. Without the guarantee of adequate legal protection, the potential of whistleblowers to expose corrupt practices will be hampered by concerns about the negative consequences they may face. This in turn will impact the effectiveness of corruption eradication efforts as a whole.⁷

³ Near, J. P., & Miceli, M. P. 2016. "After the wrongdoing: What managers should know about whistleblowing." *Business Horizons*, 59(1), 105-114.

⁴ UNODC. 2021. "State of Implementation of the United Nations Convention against Corruption." Vienna: United Nations Office on Drugs and Crime

⁵ Devine, T., & Maassarani, T. F. 2011. "The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth." Berrett-Koehler Publishers.

⁶ OECD. 2021. "Corporate Anti-corruption Compliance Drivers, Mechanisms, and Ideas for Change." Paris: OECD Publishing

⁷ Semendawai, A. H. 2021. "Memahami Whistleblower dan Perlindungan Hukumnya." Jakarta: Lembaga Perlindungan Saksi dan Korban

This research aims to analyze the existing legal framework related to whistleblower protection in the context of corruption in the private sector, identify various challenges and obstacles in its implementation, and formulate recommendations for strengthening the legal protection system for whistleblowers.

2. METHODS

This research uses a normative juridical legal research method that examines and analyzes various legal instruments related to whistleblower protection, especially in the context of the private sector. The selection of this method is based on the characteristics of the research which focuses on analyzing the legal framework for whistleblower protection in corruption crimes in the private sector. In its implementation, this research uses three main approaches, namely the statute approach, conceptual approach, and case approach.⁸

Through the statutory approach, this research examines the hierarchy of laws and regulations related to whistleblowers, including an in-depth analysis of Law No. 31/2014 on Witness and Victim Protection and various regulations related to corruption eradication and the private sector. Meanwhile, the conceptual approach is used to analyze fundamental concepts such as whistleblowing system, legal protection, corporate governance, and anti-corruption principles in the private sector. The case approach is applied to review whistleblower cases in the private sector, analyze best practices, and review relevant court decisions.

3. DISCUSSION

A. Urgency of Legal Protection for Whistleblower in Corruption Crime in the Private Sector

The phenomenon of corruption in the private sector has shown significant complexity and impact on the national economy. Based on data from Transparency International, corruption in the private sector not only harms individual companies but also creates market inefficiencies and hampers overall economic growth. In the Indonesian context, corruption cases in the private sector often involve practices such as bribery in the procurement of goods and services, manipulation of financial statements, embezzlement of company assets, and conflicts of interest in business decision-making.

⁸ Jhony Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya, 2008, h. 282

The role of whistleblowers is crucial in uncovering these corrupt practices, given the special characteristics of corruption in the private sector that are often hidden and difficult to detect by external parties. Whistleblowers, as internal parties who have access to information and evidence of violations, can be a catalyst in dismantling complex corruption schemes. However, the position of whistleblowers in the private sector faces greater challenges compared to the public sector, mainly related to economic dependence, loyalty to the company, and higher risk of retaliation.

B. Legal Framework for Whistleblower Protection in Indonesia

An analysis of the existing legal framework shows that Indonesia already has several legal instruments that can be used as the basis for whistleblower protection. Law No. 31/2014 on Witness and Victim Protection provides a general foundation for whistleblower protection, but its implementation in the context of the private sector still requires more specific arrangements. Article 10 paragraph (1) of the Law provides protection for witnesses, victims, and whistleblowers in certain cases, including corruption crimes, but has not explicitly regulated special protection mechanisms for whistleblowers in the private sector.

In addition, Law No. 20/2001 on the Eradication of Corruption has also not comprehensively regulated whistleblower protection in the context of corruption in the private sector. Although this law covers corruption offenses involving private parties, its main focus is still on corruption related to state financial losses or involving public officials.

C. Challenges in the Implementation of Whistleblower Protection in the Private Sector

The implementation of whistleblower protection in the private sector faces several significant challenges. The absence of specific regulations governing whistleblowing system mechanisms in the private sector creates legal uncertainty for potential whistleblowers. Private companies often develop their own internal reporting systems, but without adequate standards and oversight, the effectiveness of these systems is questionable.

The contract-based nature of employment relationships in the private sector creates vulnerability for whistleblowers to retaliation in the form of termination, demotion, or other discrimination. Although Law No. 13/2003 on Manpower provides general protection for workers, there is no specific mechanism to protect workers who act as whistleblowers. Organizational culture and corporate loyalty often become psychological barriers for potential whistleblowers. The negative stigma of being a “company traitor” and potential blacklisting within the industry create strong disincentives for employees who are aware of corrupt practices to report them.

D. Efforts to Develop a Whistleblower Protection System in Indonesia

In an effort to develop an effective whistleblower protection system, Indonesia can learn from the experiences of various countries that have implemented similar systems. The United States is one example of a country that has a comprehensive legal framework to protect whistleblowers in the private sector. Through the Sarbanes-Oxley Act and the Dodd-Frank Act, the United States not only provides legal protection but also provides financial incentives for whistleblowers. Meanwhile, the European Union through the EU Whistleblower Protection Directive takes a more systematic approach by requiring every company with more than 50 employees to develop an internal reporting system and protection mechanism for whistleblowers.

From these international experiences, there are several best practices that can be adopted for the Indonesian context, namely:

1. The establishment of safe and confidential reporting channels is an important foundation for an effective whistleblowing system.
2. Whistleblower identity protection should be a top priority to prevent retaliation.
3. The existence of an adequate compensation mechanism for losses that may be experienced by the whistleblower.
4. Implementation of strict sanctions for parties who retaliate against whistleblowers.
5. Providing incentives for whistleblowers whose reports are proven true and contribute to the recovery of losses.

Based on these lessons learned and analysis of the existing legal framework in Indonesia, several recommendations can be made to strengthen the whistleblower protection system in the private sector. The first step that needs to be taken is the establishment of a special regulation that specifically regulates the whistleblowing system mechanism in the private sector. This regulation should include minimum standards for the company's internal reporting system and a clear protection mechanism for whistleblowers.

Institutional strengthening is also a crucial aspect in the whistleblower protection system. LPSK as the main institution responsible for whistleblower protection needs to have its mandate strengthened and its institutional capacity enhanced. In addition, it is necessary to develop an effective coordination mechanism between various related institutions such as LPSK, KPK, OJK, and other institutions in handling whistleblower cases in the private sector.

To encourage private sector participation, an incentive system needs to be developed for companies that seriously implement an effective whistleblowing system. These incentives can be in the form of reduced sanctions in certain cases or special awards that can enhance the company's reputation. Parallel to that, education and socialization programs need to be developed to change the public perception of whistleblowers and build an organizational culture that

supports integrity and transparency.

The successful implementation of these recommendations depends on strong political commitment and active participation from various stakeholders, including the government, private sector and civil society. Strengthening the whistleblower protection system will not only encourage the disclosure of corruption cases in the private sector but will also contribute significantly to the development of good corporate governance.

4. CONCLUSION

Based on the results of the research and discussion that has been carried out, it can be concluded that legal protection for whistleblowers in corruption crimes in the private sector still requires significant strengthening. The current legal framework, despite providing a basic foundation through Law No. 31/2014 on Witness and Victim Protection, has not comprehensively accommodated the special characteristics and challenges faced by whistleblowers in the private sector.

The complexity of this problem is reflected in the various forms of corruption in the private sector, ranging from bribery in the procurement of goods and services, manipulation of financial statements, to embezzlement of company assets, all of which require the active role of whistleblowers in disclosing them.

Learning from international best practices, particularly from the United States through the Sarbanes-Oxley Act and the Dodd-Frank Act, as well as the European Union through the EU Whistleblower Protection Directive, shows the importance of building a comprehensive protection system. The system should include not only aspects of legal protection, but also financial incentives, confidentiality guarantees, and secure reporting mechanisms. Indonesia needs to adopt and adapt such best practices according to the local context, taking into account the specific characteristics of the private sector in Indonesia and the existing institutional capacity.

To realize an effective whistleblower protection system, a multi-dimensional approach involving various stakeholders is required. This includes strengthening specific regulations for whistleblowing systems in the private sector, increasing the capacity of the LPSK, developing inter-agency coordination mechanisms, and providing incentives for companies that implement effective reporting systems. Equally important is the effort to build an organizational culture that supports integrity and transparency, as well as changing the public perception of whistleblowers from “traitors” to heroes in the fight against corruption. With the implementation of these recommendations, it is expected that the whistleblower protection system can

contribute significantly to efforts to eradicate corruption in the private sector and encourage the realization of better corporate governance in Indonesia.

5. LIMITATION

In the context of research on legal protection for whistleblowers in corruption crimes in the private sector, there are several restrictions that need to be set to ensure the focus and depth of analysis. First, this research is limited to whistleblowers who report corruption crimes in the private sector, not including reporting on other forms of violations such as environmental, labor, or human rights violations. Second, the analysis of the legal framework is limited to the prevailing laws and regulations in Indonesia, specifically Law No. 31 of 2014 on Witness and Victim Protection, Law No. 20 of 2001 on the Eradication of Corruption, as well as other relevant regulations that specifically regulate the whistleblowing system in the private sector.

This research also limits the comparative analysis to best practices from the United States (Sarbanes-Oxley Act and Dodd-Frank Act) and the European Union (EU Whistleblower Protection Directive) as benchmarks of established whistleblower protection systems. In addition, the discussion of protection mechanisms is limited to aspects directly related to the safety, security and interests of whistleblowers in the context of reporting criminal acts of corruption, excluding protection in the context of litigation or other legal processes. This research also does not include an analysis of the effectiveness of the whistleblowing system that has been implemented by each private company individually.

By taking into account these restrictions, this research is expected to provide in-depth analysis and targeted recommendations for the development of an effective whistleblower protection system in the context of corruption eradication in the private sector in Indonesia. These restrictions also allow the research to focus on crucial aspects that require special attention in efforts to strengthen legal protection for whistleblowers.

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