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## **Legal Protection for Whistleblowers of Corruption Crime Bring to Fairness**

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### **Abstract**

The legal protection provided to the whistleblower is still ineffective and far from feeling safe and perfect and in the event that the complainant of a crime still often gets criminalized and discriminated against, the legal protection provided is still not sufficient to fulfill the sense of justice of what the complainant has given. This research uses normative legal research. The formulation of the problem in this study (1) Does the concept of legal protection for whistleblowers as contained in Law Number 13 of 2006 concerning amendments to Law Number 31 of 2014 regarding sex workers fulfill a sense of justice? and (2) What is the expected strategy in order to strengthen the regulation of legal protection for reporters of criminal acts of corruption in a just manner?. The conclusion of this study when viewed from the theory put forward by Lawrence M. Friedman which states that the success or failure of law enforcement is closely related to the legal system. firstly, at the level of substance, the existing regulations are still not sufficient so that more specific rules are needed to regulate legal protection for whistleblowers, the structure whose implementation is still in contact with authorities with other law enforcement officers, the culture of fulfilling the rights of those who report corruption crimes that are In practice, there is still an assessment and fulfillment of rights for reporting corruption crimes and the first strategy is providing education, information about legal protection by law enforcement officers to be given to the public in order to create legal awareness from the community.

**Keywords :** Legal Protection, Corruption, Fairness

### **1. INTRODUCTION**

Corruption is a social phenomena that is still difficult to eradicate because it has become so deeply rooted and has become a culture. These crimes are also classified as extraordinary crimes and transnational organized crimes. (Evi Hartanti, 2012) The effects of the crime of corruption have resulted in the destruction of the nation's economy. Of course it will not be in line with the spirit of the nation that the State of Indonesia is a welfare state as well as a state of law. (Bambang Waluyo, 2016) The Indonesian government's efforts to eradicate a social phenomenon called corruption has become a reality of behavior that is considered a deviant act and can endanger the lives of the community, nation and state. (Robert K and Aris Irawan,

In the context of optimizing the reform of the prevention and control system for corruption, public involvement is very important, this is regulated in Article 41 paragraph (1) of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which reads "That the community can play a role in helping the prevention and eradication of corruption". Thus, in the strategy of eradicating corruption, there are three main elements, namely prevention, strengthening and prosecution from institutions and community participation.

In developing community participation in revealing organized and systematic corruption, it must be accompanied by creating a conducive climate, among others, by providing legal protection and special treatment to everyone who knows, reports and or finds something that can help law enforcement officers to uncover and deal with these crimes. (Lilik Mulyadi, 2015) Given that corruption is very

detrimental to the community so that the community can participate in helping efforts to prevent and eradicate it. (Bambang Waluyo, 2017) Legal protection for whistleblowers who submit information, suggestions and/or opinions regarding allegations of corruption, intended to provide a sense of security for the reporter which is carried out in accordance with the provisions of the legislation. In terms of providing a sense of security to the reporter, law enforcers are obliged to keep the possibility of knowing the identity of the reporter or the contents of the information, suggestions, or opinions being disclosed confidential. (Bunga et.al, 2019) In agreement with the United Nations (UN) Convention, the United Nations also instructs all signatory countries to consider legal provisions that can protect people who report criminal acts, this is contained in the Protection of reporting persons in article 33, which provides for whistleblower protection (APC, 2015): law enforcers are obligated to keep secret the possibility of knowing the identity of the reporter or the content of the information, suggestions, or opinions submitted. (Bunga et.al, 2019) In agreement with the United Nations (UN) Convention, the United Nations also instructs all signatory countries to consider legal provisions that can protect people who report criminal acts, this is contained in the Protection of Reporting Persons in article 33, it provides for whistleblower protection (APC, 2015): law enforcers are obligated to keep secret the possibility of knowing the identity of the reporter or the content of the information, suggestions, or opinions submitted. (Bunga et.al, 2019) In agreement with the United Nations (UN) Convention, the United Nations also instructs all signatory countries to consider legal provisions that can protect people who report criminal acts, this is contained in the Protection of reporting persons in article 33, it provides for whistleblower protection (APC, 2015):

*“Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offenses established in accordance with this Convention.”*

*The implementation of Article 33 in domestic legal systems is crucial for the protection of whistleblowers and for their contributions to be taken seriously.*

The public is given the right to assist the government in seeking, obtaining and providing information as well as reporting allegations of Corruption Crimes and the right to submit suggestions and opinions responsibly to law enforcers who handle corruption cases. Although Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims has provided some fresh air for the Reporting Party, the Reporting Witness, the victim and the perpetrator’s witness, however, with several revisions and additions to articles in the Law, The law is like article 10 paragraph (1) which reads “Witness, Victim, Witness Perpetrator, and/or Reporting Party cannot be legally prosecuted, both criminal and civil for the testimony and/or report that will be, is being, or has been given,

The explanation and content of the article will certainly cause problems. Between paragraph (1) which explains that the complainant cannot be prosecuted for his report and paragraph (2) which explains that in the event of a lawsuit against the complainant, it must be postponed and will be processed after the report given has received a legally binding decision. Nevertheless, the explanation of the article allegedly can be used as an entry point that the reporter can still be prosecuted for the report that has been given even though the report was given on the basis of good faith as in the example of a legal event located in Citemu Village, Mundur District, Cirebon Regency named Nurhayati village treasurer. who reported the alleged case of corruption in village funds carried out by the village head named Supriadi which led to the determination of the suspect on his own report. This of course will cause a reaction to the public that the legal protection provided to the complainant is still ineffective and still far from the word sense of security and perfection and in the event that the reporter of a criminal act is then reported back by the reported party, this will certainly lead to a lack of public trust in the enforcer. the law to help uncover criminal acts of corruption, moreover the legal protection provided is still deemed not to fulfill the sense of justice from what the complainant has given. This will certainly lead to a lack of public trust in law enforcement to help uncover criminal acts of corruption. Moreover, the legal protection provided is still deemed not to fulfill a sense of justice from what the complainant has given. This will certainly lead to a lack of public trust in law enforcement to help uncover criminal

acts of corruption. Moreover, the legal protection provided is still deemed not to fulfill a sense of justice from what the complainant has given.

Based on the background of the problems that have been stated above, the authors are interested in researching and reviewing and pouring them into a scientific research in the form of a legal journal and the formulation of the problem that will be discussed in this study, namely (1) What is the concept of legal protection against the complainant contained in in Law Number 13 of 2006 concerning amendments to Law Number 31 of 2014 concerning PSK has fulfilled the sense of justice? and (2) What is the expected strategy in order to strengthen the regulation of legal protection for reporters of criminal acts of corruption in a just manner?.

## **2. METHOD**

This research uses the type of research or normative legal approach. Researchers in conducting library research, namely by reviewing legislation, books, documents, research results, and so on related to the problems to be studied by researchers. In this study, there are several approaches used to seek and find answers to problems. Approaches that are relevant to this legal research are the Statute Approach to determine the regulation of legal protection for the complainants of criminal acts of corruption and the Conceptual Approach to determine the values contained in the norm.

Analysis of the data used in this study is a deductive qualitative method, namely general data about the conception of legal materials in the form of legal principles, postulates and teachings (doctrine) and expert opinions which are systematically arranged as an arrangement of legal facts.

## **3. RESULTS AND DISCUSSION**

### **3.1 The concept of protection against whistleblowers of corruption that is currently in force is in accordance with Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning PSK**

The most important goal in a rule of law is the existence of respect and commitment to upholding human rights and guarantees that all citizens have Equality Before The Law. Such a principle ideally is not only contained in the 1945 Constitution of the Republic of Indonesia and other laws and regulations. But the most important and foremost is in the implementation or implementation. Implementation in providing legal protection is a form of service that must be provided by the government to provide a sense of security to every community. (Sharistha Nathalia Tuage, 2013) Legal protection for the community must be a major part of the Corruption Crime prevention policy, so that legal alignments with the community are realized in real terms.

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 that have occurred and report the matter to law enforcement. (Fiskia Joan Matondong, 2015) Such a reporter must be given adequate legal and security protection for his report, so that he does not feel threatened or intimidated by his rights or life. With the guarantee of legal protection and security, it is hoped that a situation will be created that allows the public to no longer feel afraid to report any findings or evidence that leads to the existence of a criminal act of corruption to law enforcement officers (Agus Takariawan 2016) because they are worried or afraid that their life will be threatened by certain parties. In 2006 in order to optimize the provision of legal protection for public participation in tackling Corruption Crimes, then Law No. 13 of 2006 concerning the Protection of Witnesses and Victims was formed which was motivated by the importance of a testimony for the sake of proof in a criminal act which is the basis When this law is made, its legal substance is also oriented to the interests of the people. However, in the law there are still very few articles that regulate legal protection for people who report suspected criminal acts of corruption,

- 1) A Witness and Victim are entitled to:
  - a. Obtain protection for personal, family and property security and be free from threats related to the testimony that will be, is being, or has been given;
  - b. Participate in the process of selecting and determining the form of security protection and support;
  - c. Provide information without pressure;
  - d. Get 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. Get a new identity;
  - j. Get a new place of residence;
  - k. Obtain reimbursement of transportation costs as needed;
  - l. Obtain legal advice and/or;
  - m. Obtain temporary living expenses assistance until the protection period ends.
- 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 decision of the LPSK.

As described above, Article 5 paragraph (1) of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims explains in detail what rights will be obtained in tackling criminal acts which are only given to witnesses and victims of criminal acts in cases of crime certain cases without mentioning the rights that will be given to the complainant of a crime.

Moving on from this, there are still some shortcomings in the regulation of the provision of protection, there are several provisions that are considered lacking in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. In 2014 the Previous Law was added to several provisions and then re-enacted into Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. The rights to be obtained and the rights to be granted are expanded in the explanation of article 5, which states that:

- 1) A Witness and Victim are entitled to:
  - [...]
  - i. His identity is kept confidential;  
[...]
  - k. Obtain temporary residence;  
[...]
  - p. Get assistance  
[...]
- 3) In addition to witnesses and/or victims, the rights granted in certain cases as referred to in paragraph (2) may be granted to witnesses of perpetrators, reporters and experts, including people who can provide information related to a criminal case even though they have not heard of it. himself, he did not see it himself, and he did not experience it himself, as long as the person's information relates to a criminal act.

As described above, especially in Article 5 paragraph (3), it expands the legal protection provided, not only focusing on witnesses and victims, but also providing legal protection to whistleblowers who participate in reporting corruption. The whistleblowers are entitled to legal protection both regarding legal status and a sense of security. Protection against a sense of security can be provided if the complainant submits a request to law enforcement officials for physical security for himself and his family. In addition, the complainant of a criminal act of corruption will also be given the right to obtain confidentiality of identity in the judicial process. However,

In addition to the rights described above, the whistleblower also gets legal protection in the form of not being able to be legally prosecuted, both civil and criminal for his report. The rights of the complainant are regulated in Article 10 paragraphs (1) and (2) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims which states that:

- 1) Witnesses, Victims, Perpetrators, and/or Whistleblowers cannot be legally prosecuted, both criminal and civil for the testimony and/or reports that will be, are being, or have been given, unless the testimony or report is not given in good faith.
- 2) In the event that there is a lawsuit against a Witness, Victim, Witness Perpetrator, and/or Reporting Party for the testimony and/or report that will be, is being, or has been given, the

lawsuit must be postponed until the case that he reports or gives testimony has been decided by the court. and obtain permanent legal force.

As described above, that a whistleblower cannot be legally prosecuted, either civil or criminal, for a report that will be, is being or has been given, but if there is a lawsuit in the report of the reporter, the lawsuit will be postponed until the case is being reported. and handled to obtain a court decision that has permanent legal force. The form of protection for the whistleblower is highly dependent on the extent to which a law enforcement officer/institution handles it. This capability is also closely related to the capacity of law enforcement officers/institutions and financial aspects or Government budget support for a law enforcement officer/institution that specifically handles reporting systems and the protection of whistleblowers. (Surafli Noho, 2016)

### **3.2 Criticism of Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning PSK**

Lawrence M. Friedman argued (Amir Ilyas and Jupri, 2018) that the success or failure of law enforcement is closely related to the legal system. The intended legal system is divided into 3 (three) elements of the legal system, including:

1. Substance of legal system, namely the entire rule of law, legal norms, and legal principles, both written and unwritten, including court decisions;
2. The structure (Structure of legal system), namely the entire existing legal institutions and their apparatus, includes, among others, the police and their police officers, the prosecutor's office with their prosecutors, the courts with their judges, and others;
3. Legal culture, namely opinions, beliefs/beliefs, habits, ways of thinking, and ways of acting, both from law enforcers and from citizens, about the law and various phenomena related to the law.

The three legal systems described above will serve as a touchstone in examining the factors/weaknesses that affect the fulfillment of the rights of those who report corruption. The first relates to the substance, after the revision of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims to Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, there are at least 27 points of change in Law on the Protection of Witnesses and Victims which was later embodied in the Amendment Act, which was later ratified and promulgated on October 17, 2014 State Gazette of the Republic of Indonesia of 2014 Number 293.

- 1) Witnesses, Victims, Perpetrators, and/or Whistleblowers cannot be legally prosecuted, both criminal and civil for the testimony and/or reports that will be, are being, or have been given, unless the testimony or report is not given in good faith.
- 2) In the event that there is a lawsuit against a Witness, Victim, Witness Perpetrator, and/or Reporting Party for the testimony and/or report that will be, is being, or has been given, the lawsuit must be postponed until the case that he reports or gives testimony has been decided by the court. and obtain permanent legal force.

As described above, there are still weaknesses in Article 10 paragraphs (1) and (2). The weakness is that the reporter cannot be prosecuted legally, both criminally and civilly for the report that will be, is being or has been given unless the report is given not in good faith, then the explanation in the explanation chapter only explains the parameters of good faith according to the testimony, among others: giving testimony not in good faith" namely giving false information, perjury, and conspiracy. Then what is the benchmark for the report given by the reporter so that it can be considered that the report is based on good faith, in the explanation chapter of article 10 paragraph (1) it is not explained in detail about the reporting parameters "not in good faith".

Then article 10 paragraph (2) as stated by Abdul Haris Semendawai:

"If someone reports an alleged criminal act of corruption, but when the report has not been processed, the reported party reports back to the police for defamation, so that the complainant of an alleged corruption crime is punished first, then this cannot be prosecuted. legally".

In line with what has been stated by Abdul Haris Semendawai, that if there is a lawsuit against the complainant, the lawsuit must be postponed until the reported case has been decided by the court and has permanent legal force. corruption by the reported party, but then the reported party feels aggrieved as a result of what has been done by the reporting party so that the reported party files a lawsuit for defamation, whether the lawsuit will still be processed, or will it be turned over to the complainant and named a suspect for his report. This of course can be a weakness in the Act.

The second is related to structure, a crucial and substantial issue from the perspective of institutional/institutional constraints is the institution/institution that is authorized to handle and provide legal protection for a reporter, this dimension needs to get important attention because it correlates with the report handling process so that it can be handled appropriately. , quickly and effectively and on the other hand a reporter for a criminal act of corruption gets protection, security guarantees for the information that will be, is being or has been given. Another problem is that the authority of the institution/institution that correlates with legal protection may intersect with the authority of law enforcement officers. Suppose,

The third relates to Legal Culture. The legal culture is also relevant to the fulfillment of the rights of those who report corruption crimes, which in practice there are still assessments and the fulfillment of rights for those who report corruption crimes has not been maximized. Thus, it can be said that from a regulatory perspective to fulfill the rights of those who report corruption crimes, progress has been made. The legal norms governing the participation of the community are as if they were only “figuratively speaking” considering that in practice in the field it is not as beautiful as imagined (Arjuno et al. al, 2017) At the implementation level, there is often a deviation between law enforcement officials in formulating the protection intended by the law and the treatment provided by law enforcement officers in providing protection is considered insufficient, which resulted in the whistleblower being often intimidated and criminalized by people suspected of being involved in the reported crime. So that the public prefers to remain silent because of the public’s lack of trust in law enforcement officers to help uncover criminal acts of corruption, moreover the legal protection provided is still not in accordance with what is mandated by law, this is what makes corruption cases still occur. In Indonesia, due to the legal protection provided, there are still many weaknesses.

### **3.3 The formulation of justice that should be used in the context of strengthening legal protection against whistleblowers of criminal acts of corruption.**

Talking about the dimensions of justice, according to John Rawls asserts justice as fairness, a theory of justice based on the traditional conception of the social contract to a higher level of abstraction. According to John Rawls, there are at least 2 (two) principles that govern justice. First, the principle which states that everyone has the same rights over the entire system of the same basic liberties as broadly as possible, which can be harmonized with the same system as other people. Second, states that social and economic inequality (inequality) must be regulated in such a way as to produce optimal benefits for those who are least fortunate, and provide a system of equal access for all positions in equal opportunities.

Whereas in the handling of legal protection for the complainant of corruption, the principle of equality before the law cannot be applied (the principle of all being equal before the law) but it is more appropriate to apply the principle of equality before the justice. The points that can be drawn from John Rawls’ theory of fairness regarding social inequality must be arranged in such a way as to produce optimal benefits for those who are less fortunate. If this theory is related to Article 10 of Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the protection of witnesses and victims, in order to minimize or even eliminate the existence of lawsuits in the report from the complainant,

In line with this theory, based on the theory of John Rawls, it is hoped that the protection of whistleblowers of corruption will not be repeated in the hope of spurring the public’s beliefs to cooperate in eradicating corruption. So that the difference opens up the space and dimensions of a person who may not be sentenced to a criminal offense (the reporter is not prosecuted for criminal / civil due to his report) as long as he is responsible for the actions committed (if the report is considered lacking evidence / it is not proven that the reported party has committed a criminal act of corruption) by restoring the balance such as the original state (restitution in integrum) as a result of the actions that have been carried out and of course facilitated by law enforcement officials.

### **3.4 Strategies to strengthen legal protection for whistleblowers of criminal acts of corruption that fulfill a sense of justice**

Starting with the provision of education, information about legal protection by law enforcement officers that will be given to the community in order to create legal awareness from the community. (Andi Hamzah, 2005) Improving legal awareness is a significant aspect that sees how people perceive the provisions as civic minded (in favor of the interests of the community) so that people will always obey and be aware of the importance of law as a general regulation. (Manegeng and V Rebeca, 2014) In this case, the public must be given another psychological understanding of the legislation. In addition, law enforcers not only explain the rules, but why the rules were made and what benefits the community gets. Taking into account the psychological aspects of society, very easy to communicate a rule. (Arman Suadi, 2018)

The provision of protection for those who report criminal acts of corruption must be provided by professional personnel who can apply the purpose and intent of providing protection by law. The provision of protection that is not well targeted will actually have a more severe impact until the trust of the entire community is destroyed in the contribution it will make in tackling the corruption that will be reported. Because the most important part in the implementation of law enforcement is the role of law enforcers to examine cases with all their relations including the parties involved in a case. (Sutan Remy Sjahdeini et.al, 2016) The factors that influence the success of a law implementation and application include legal substance, structure and culture. Legal norms are said to be successful or effective if they are obeyed and implemented by the community and the law enforcement apparatus themselves. (Salim HS and Erlies Septiana Nurbani, 2017) In an effort to protect the whistleblowers of criminal acts of corruption, the factors of law enforcement officers are very influential. This is fundamental to the non-fulfillment of some of the rights of reporters of corruption crimes contained in the Law on the Protection of Witnesses and Victims. (Sinar et.al, 2020) If it is understood, the role of the reporter is so important to assist law enforcement officers in revealing the occurrence of corruption related to Gratification, because without any information obtained and submitted by the reporter, the settlement of corruption cases starts from stage of investigation, investigation, prosecution and examination in court will not be carried out as expected. This will certainly be very detrimental to society and the government in an effort to prevent and eradicate corruption.

Furthermore, the concept of legal protection for reporting corruption in Indonesia as a strengthening strategy in the future by using a comparative or comparative approach. In the book (Barda Nawawi Arief, 2014) quoting Black's Law Dictionary, he gives the understanding that "comparative jurisprudence is a study of the principles of legal science by comparing various legal systems". When viewed in the United States, the regulation of legal protection for whistleblowers is regulated in the 1989 whistleblower act which is oriented towards protection from dismissal, demotion, threats, temporary dismissal, harassment and acts of discrimination. Meanwhile in Australia, the protection for whistleblowers is regulated in articles 20 and 21 of the Protected Disclosures Act 1984.

If we look at the regulation of Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the protection of witnesses and victims, it also regulates the same thing with the United States and Australia, but what makes Indonesia different is still often Reporters of criminal acts of corruption are criminalized and published so that their identities are known by the wider community.

## **4. CONCLUSION**

The success or failure of law enforcement is closely related to the legal system. First, at the level of substance, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims which expands the legal protection provided in article 5 paragraph (3) and explains that the complainant will also have rights which will be given. Second, at the structural level, the problem of providing legal protection to whistleblowers of corruption whose implementation is still in contact with the authority of other law enforcement officers, namely the Police, the Prosecutor's Office and the KPK, so that there is a need for affirmation of authority so that there is no deviation in the provision of legal protection. Third legal culture, the fulfillment of the rights of those who report corruption, which in practice there is still an assessment and fulfillment of the rights of those who report corruption, so that people believe that the legal protection provided does not guarantee their personal safety and will take a lot of risks, so that people prefer to remain silent in an

effort to combating corruption. The first strategy, providing education, information about legal protection by law enforcement officers will be given to the community in order to create legal awareness from the community. the community must be given a psychological understanding of the legislation. In addition, law enforcers not only explain the rules, but why the rules were made and what benefits the community gets. By paying attention to the psychological aspects of society, it is very easy to communicate a rule. The second strategy is to provide protection for whistleblowers of criminal acts of corruption, which must be provided by professionals who can apply the purpose and intent of providing protection by law. The third strategy uses a comparative method which looks at the rules that apply in other countries in order to strengthen legal protection arrangements to find the concept of legal protection for reporters of criminal acts of corruption that are fair in the future.



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