



Legal Protection of Whistleblower Witnesses in Revealing Corruption after the Issue of Supreme Court Circular No. 4 of 2011



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Abstract

In order to eliminate corruption, Indonesia has made various Efforts through the establishment of laws and development of commissions. However, corruption still occurs with all tactics and ways behind politics, economics, and power. Moreover, corruption is organized crime or white-collar crime. That why it is difficult to determine the main actor who knows much about it because corruptions Also Involved in that. To reveal corruption, then there must be a whistleblower as a witness, who is willing to reveal the corruption that has occurred because they saw, heard, and had experienced it by themselves, later practically called as a crown witness or key witness. Act No. 13/2006 and the Supreme Court Circular Letter No. 4/2011 have not been fully able to provide protection to whistleblowers from the investigation, prosecution, and examination. Since now, there are no laws that specifically against whistleblowers. It is the caused whistleblower remains silent against the corruption.

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1. Introduction

The problem of corruption in Indonesia today is not a hot issue when compared with the past, because the past corruption was only done by state officials or civil servants who have misused state finances. But now corruption has involved a wide range of existing institutions such as the legislative, judicial, and even corporate conglomerate. If the author may say that corruption in Indonesia is like cancer that has a high stage that spread everywhere so it is difficult to prevent. Because of the problem of corruption is quite complex and always involves various parties. Resulting in eradication efforts are always difficulties and even limped behind the growth rate of the tactics and strategy of the perpetrators of corruption¹.

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Satjipto, R. (2000), Wahyudi, A. T. (2016), corruption is an action taken with the purpose of unlawful enrichment themselves or another person or a corporation that can be detrimental to state finance or economy. So it is a violation of the right to social and economic rights of the people because it has hurt state finances to trillions of rupiah.

Indonesian government in tackling corruption has sought to combat through various policies in the form of making laws is also the establishment of the commissions. And these efforts start from law enforcement agencies because the agency that holds the image of the spear in enforcing the law in Indonesia. Because the eradication of corruption is closely related to the performance of the law enforcement agencies themselves, as well as corruption occurs because a person who unlawfully has put his personal interests or group above the interests of the people, by various forms of abuse such as policy instruments (including tariff policy, the implementation of the contract, repayment of the loan), so that corruption seeped into the constitutional system (Effendi, 2012).

Corruption is an act that is politicized so that it becomes a crime against the state and society. Political forces have been able to create in the conclusion that corruption is a cultural society so that corruption has always been associated with political influence in order to maintain political power and to bring down the ruling political opponents. As expressed by John Emerich Edward Dalberg Acton states that "power tends to corrupt, and absolute power corrupts absolutely" (power tends to corrupt, absolute power tends to corrupt and absolute).

Since 1950 until now the history of Indonesia has noted, that the law enforcement in Indonesia is a weak political institution and politically it can be affected so that law enforcement and judicial power by design or by accident often become a political tool by the executive power and legislative power.

Former Attorney General Baharudin Lopa once said that corruption in Indonesia is technically difficult to eradicate because the proof is difficult when there is someone to give a gift or other thing to an official.

It is well known that the fight against corruption will not be maximized if only undertaken by the government without the involvement of the public who are aware of corruption in the neighborhood. If there are people who are willing to report, then those rights will be the starting point of enforcement and prevention efforts against corruption. But it is not easy to be a person who can report acts of corruption; especially high-ranking officials involved precisely the country that has the political forces in power. So that it is deemed to have a high risk. Seeing such circumstances, there are not many people who dare to expose corruption cases, so the silence away or shut up an attitude that was chosen to avoid the risk, because they felt the legal protection acquired is still not up to such intimidation, persecution and discrimination (Hartono, 1991).

Therefore, if there are people who are directly aware of corruption, and the person has the courage to uncover the veil of the actions taken either as a witness or know directly involved in such crime. Then that person can be considered as "whistle drum" because it has been willing to work together to resolve allegations of corruption that occurred. The person referred to as a whistleblower, i.e. an employee who reported irregularities at the place he worked for the government or law enforcement agencies (Kaligis, 2006).

The willingness of becoming a whistleblower should be praised because the person has dared to risk his life to be backed up with honesty. Given the willingness to tell the truth at the present time to the problems that have occurred is a matter that rare and it is hard to find so that the actions of such a person should be followed, because he is ready to be a real volunteer in a corruption that has occurred and to cooperate to reveal such crime.

However, if the testimony given is still weak in juridical facts, the testimony given can be easily attacked behind the pretext of "defamation" so that the whistleblower status will turn into a suspect. As it was mentioned that there were 24 cases of reporting corruption, which ended just became a case of defamation.

Such case of Endin Wahyudin who was originally intended to report the judge who had accepted bribes to justice, but quite the contrary he himself being dragged to court on charges of defaming the judge, and the judge himself declared free from the bondage of the law. The following case is Khairinsyah former BPK auditor who has unraveled a bribery scandal at the General Election Commission by reporting the case to the Corruption Eradicate Commission, but rather he himself was suspected corruption in Religious Community Endowment Fund for having received transport money IDR 10 million. Cases of election bribery scandal in which BI Senior Deputy Governor Miranda Swaray Goeltom revealed by Agus Tjondro of PDIP but instead Agus was sent by the Commission because he has received funding from Miranda's own gratification. The case that is no less big scandal was the case of Susno Duadji the Commissioner General of Police at Police Headquarters

Korusi (2002), to give a sense of comfort to the whistleblower, the government through the Law has provided related to the protection of basic rights, such as Act 39 of 1999 on human rights. Constitution of the Republic of Indonesia in 1945 under Article 28 D Paragraph (1) states "everyone has the right to recognition, security, protection and legal certainty and equal treatment before the law" Similarly, Article 29 paragraph (1) states "everyone has the

right the protection of self, family, honor, dignity, and property under his control, and has the right to feel secure and protected from the threat of fear to do or really do not do something that is a human rights " (No, S. E. M. A. (4)).

Therefore, to assist the government's efforts in tackling corruption in Indonesia, the government issued a Supreme Court Circular No.4 of 2011 on the Treatment of the Reporting Crime (Whistleblower) and Actors Cooperating Witness (Justice Collaborator) on August 10, 2011, which aims, among others:

- a) The need to encourage public participation in uncovering organized criminal acts, such as corruption, terrorism, drugs, money laundering, trafficking in persons, all of whom have endangered the joints of people's lives and development of the nation. So by providing legal protection and special treatment to every person who knows it, report or determines a matter that can assist law enforcement officers in criminal acts reveal and handling is effective.
- b) To provide legal protection in order that the information given can be freed from the threat or pressure from other parties, so awake originality of the information given.

Rasjidi, L., Sos, S., & Putra, I. W. (1993), the issuance of the Appellate Court has referred to Article 37 of the UN anti-corruption conventions (UNCAC, 2003 which has been ratified by Act 7 of 2006) and article 26 of the UN convention anti transnational organized crime (UNCATOC, 2000 has ratified with Law No. 5 of 2009, which obliges the member states to consider the reduction of penalties and prosecution for whistleblower immunity in certain cases.

Related to this, the first problems arise are, *first* how the position of a whistleblower in corruption is? *Second*, how legal protection is acquired by a whistleblower according to regulations in Indonesia?

2. Research Methods

The present study applied the qualitative methods. All data is analyzed descriptively. It is used a paraphrase to explain, elaborate, and explore regarding the phenomenon belonging. The conclusion is the last remarked based on the previous discussion and result.

3. Results and Analysis

3.1 Witness Reporter / Whistleblower position in Corruption

Reporting witness called by the whistleblower in the corruption is an important one, especially in exposing corruption, because the report can be obtained preliminary evidence that is used to uncover any cases of corruption. Anyone who is willing to be a whistleblower then that person is ready to accept the risk that is acceptable.

The success of the criminal justice process depends on the evidence that has been disclosed or discovered. There are still many cases of corruption that cannot be disclosed due to the absence of witnesses found to testify.

In the Criminal Procedure Code article 184 paragraph (1) states that include, among others, as evidence statements of witnesses, expert testimony, letters, instructions, and information from the defendant. Furthermore, what is meant by the witness is "the person who can provide information for the purpose of the investigation, prosecution, and trial of a criminal case that he heard it himself, he sees it himself and/or his own natural citing the reason of his knowledge". (Article 1 point 26 of the Criminal Code)

Likewise, Article 1 paragraph 1 of Law No.13 of 2006 on the Protection of Witnesses and Victims said the witness was "the person who can provide information for the purpose of inquiry, investigation, prosecution, and examination before the court on a criminal case that he heard him, he sees alone, and experience it" (Eddyono, 2006).

Legislation has been determined that the person to be a witness has an obligation, so if there are people who avoid or refuse from calling as a witness the judge with the authority ordered the public prosecutor so that witnesses should be presented in court (Article 159 paragraph (2) Criminal Procedure Code)

The enactment of Act 8 of 1981 on Criminal Procedure (Criminal Procedure Code) in Indonesia is part of the process to seek justice in criminal acts in general, but for corruption had been born of Act No.31, 1999 has been amended by Act 20 of 2001, associated with Act 30 of 2002 on the Corruption Eradication Commission (KPK) (Djaja, 2010).

In today's conditions, the law in Indonesia is experiencing a degradation of trust from the public. Because the law is considered only in favor of certain people, so it is not easy for someone to willing to be a witness in the occurrence of a crime. Someone to be a witness must be able to bear all the risks facing such as, among others:

- a) For witnesses who are still unfamiliar with the law, to provide information is not an easy one.
- b) If the information given was wrong then exposed to criminal threats because they have given false information.
- c) Information given at some point turned on him the status of a suspect.
- d) Provide information can be a waste of time and cost, and can even threaten the safety of you.

Therefore, in order to witness testimony has a value of strength of evidence, then:

- a) The witnesses must take an oath.
- b) Valuable witness testimony is as evidence.
- c) Witness testimony must be given at the hearing. (Article 185 (1) Criminal Code
- d) The testimony of a witness is not considered sufficient.

Based on the things mentioned above, not all people are easily willing to be a witness in a criminal act occurred, because all the risks that would be faced already imaginable. Act No.13 of 2006 on Witness Protection has provided protection against someone who was a witness and a victim in a criminal act. But that does not mean everyone has the courage to be a witness.

Act 30 of 2002 on the Corruption Eradication Commission provides an understanding of the whistleblower is a reported act of potential corruption occurring within the organization where he works, and he has access to adequate information on the indication of corruption that has occurred.

Thus the position of whistleblowers is equal to a witness who can reveal the facts known to itself, seen alone, the offenses to be, is or has happened and disclose it to the public.

While the alleged crime put forward by someone who did not see themselves, not to be heard alone, or not experienced themselves, but source it from other people who are not able to express themselves because there is no courage fear for her safety. Then the person is not among the category of a whistleblower. The existence of that person cannot be recognized, because it is not something that is seen alone, heard his own and his own experience. To this case, it should be suspect of personal or group interests of the offenses or to the competent authority.

Komariah E. Supardjaja states that the indispensable role of a whistleblower at the present time in efforts to combat corruption is highly required, along what was revealed there are the basics of juridical supported by concrete facts. But it should not be just a rumor in uncovering acts of corruption. So the police as investigators when there is a report from a whistleblower should remain cautious when receiving reports of corruption.

Therefore, in supporting the proceedings of corruption, it does not rule out that a whistleblower to be present or not present in court, in order to conceal the identity of the complainant, but should be made dossier (article 185 (1) Criminal Code) , Even in the development paradigm in society, how verification can be done by video conference. This can occur in cases involving Rahardi Ramlam, who testified in the case where the former President is B.J.Habibi who testified via video conference. So the testimony is done in a way that is considered legitimate or legal and is not contrary to the Criminal Procedure Code.

3.2 Legal Protection of Reporter Witness / Whistleblower Reveals Corruption

The government in dealing with a crime that occurred cannot be separated from the cooperation between law enforcement agencies. But in fact, the perpetrators of corruption involve law enforcement officials so that the investigation process is experiencing a bottleneck. Law enforcement in the face and or settle a case, in pursuit of a feat in order to maintain the good name of the corps, sometimes have to sacrifice human rights resulting in an injustice, because it coincides with the law enforcement officials who were in power, who have the authority to pursue the achievement of justice, in fact, it can cause injustice. So that such circumstances may affect the community as a whole. A sentencing arising from dishonesty or engineering may give rise to claims against the legitimacy of a country that upholds the values of individual rights. This, in turn, can impose moral integrity of the judicial process, so that it can undermine public trust in law enforcement in Indonesia.

Article 1, item 6 of Law No. 13 the year 2006 about the Witness Protection Agency says "protection is all the effort on the fulfillment of rights and provision of assistance to provide security to witnesses and victims who must be carried out by the Witness Protection Agency or other agencies with enactment legal provision ".

Law can be used to realize the protection of which nature is not merely adaptive and flexible, but also predictive and anticipatory. Given that the law is needed for those who are weak and who are not strong socially, economically, politically in achieving social justice. Because the law has the ultimate authority to determine human interests that need to be regulated and protected.

Satjipto Rahardjo in his view mentioned that "the protection of the law is to provide shelter for human rights which harmed others and the protection given to the public in order all the rights granted by the law".

Article 9 of Law No.13 of 2006 on Witness Protection which states that:

- a) Witnesses or victims who feel they are in a very big threat, with the approval of the judge may give testimony without a direct presence in the court where the case is examined.
- b) Witnesses or victims referred to in paragraph (1) may provide a written testimony submitted before the competent authority and require the signature on the minutes of testimony that made the testimony.
- c) Witnesses or victims referred to paragraph (1) may also hear testimony directly through electronic means and was accompanied by a competent authority.

Of the provisions of Article 9 above, there are several types of protection that can be given to a witness and victim, among others:

- a) Physical protection in the form of security, escort and placement in detention. This protection is given is aiming to provide security to the witnesses that include the protection of personal safety, family and property.
- b) Non-physical protection may be providing services such as doctors, psychology, and religious leader. It can be given either when the whistleblower is in the states of disorders and mental health.
- c) Legal protection may be that the whistleblower cannot be prosecuted in criminal or civil about the report, may also be legal advisory services, and also get information about the progress of the case in the form of a court decision or released convict.

Furthermore, in article 10 of Law No.13 of 2006 on Witness and Victim Protection said:

- a) Witnesses, victims, and the complainant cannot be prosecuted as civil and criminal statements, the testimony would be, being, or have been given.
- b) A witness who is also a suspect (is generally called a crown witness) in the case of the same type, cannot be exempt from criminal prosecution if he is proved legally and convincingly guilty, but his testimony could be considered by a judge in a criminal case to be sentenced.

From the formulation of article 10 above, has clearly stated that the judge has the authority to be able to lighten the punishment of whistleblowers. The existence of these formulations can be intended that there are many challenges in order to uncover the major cases such as corruption has a strong network of mutual benefit to each other so that the interest to protect each of them. Because of corruption cases including cases of organized crime or white collar crime, so as to determine who the main actors who know a bit difficult because the case is also related in it who benefit from such crimes. So the person in question may not report the cases to the authorities. Therefore, in practice to present a witness occurrence of corruption cases remains the coercive measures.

This is because there is still the fear of man as a whistleblower to the protection that would be obtained when its status as a whistleblower. Because a whistleblower on corruption cases still do not get protection. Besides, it is also still weak understanding of law enforcement against a person who is able to reveal acts of corruption that should get the award, but in reality, the person was generally sentenced.

An understanding of the position of whistleblowers is still lacking, this might impact on efforts to obtain legal protection when uncovering cases of corruption. Supposedly protection obtained can be in the form of protection provided by the laws concerning the rights and obligations, including protection of physical and mental threats, harassment, terror, and violence from any side, starting at the stage of the investigation, searching, prosecution and examination before the court.

Someone who dared to become a whistleblower, because he has good intention faith to be morally attached to him when his testimony or a report can be used as a base for uncovering even break the corruption cases that have occurred. Cooperation undertaken is expected for immunity or reduction of the prison sentence and physical protection obtained for himself and his family.

The existence of Act No.13 of 2006 on the Witness Protection Agency, as well as Supreme Court Circular No.4 of 2011, did not fully liberate the whistleblower, but judges are required in determining the punishment to be meted out

to consider the criminal punishment in the form of a criminal trial special conditional, and / or convict the lightest among other defendants convicted in a case that happened, while maintaining a sense of social justice.

The provision itself, in fact, a whistleblower whose status as a person involved in the case has been getting leniency? This is certainly quite difficult for the Agency to give an account of the provisions of article 10 of Law 13 of 2006 because it will be considered to intervene against the authority of a judge.

Associated with the position of the whistleblower in obtaining legal protection at the time revealed the corruption there is no legislation specifically be relied upon to provide protection against whistleblowers so that an understanding of the position of whistleblowers is still lacking. Supposedly protection obtained can be in the form of protection provided by the laws concerning the rights and obligations, including protection of physical and mental threats, harassment, terror, and violence from any side, starting at the stage of searching, investigation, prosecution, and examination before the court.

The existence of Act No.13 of 2006 on the Witness Protection Agency, as well as Supreme Court Circular No.4 of 2011, did not fully liberate the whistleblower, but judges are required in determining the punishment to be meted out to consider the criminal punishment in the form of a criminal trial special conditional, and/or convict the lightest among other defendants convicted in a case that happened, while maintaining a sense of social justice. Such circumstances should be restored to the conviction of a judge at the time of the whistleblower in providing information and strong evidence that significant in the trial. It is precisely to be able to give a chance to judge for collusion in deciding a case of corruption.

4. Conclusion

- a) Corruption is categorized as organized crime or white-collar crime so it is difficult to determine because the main actors who know precisely involved in it. The role of the person involved is called whistleblower or a witness, can help uncover acts of corruption, because the testimony given is a self-object heard, seen alone and/or vicariously citing the reason of his knowledge.
- b) Disclosure of corruption in Indonesia still has problems because not everyone whose position as a witness/whistleblower is willing to testify because it is not yet fully legitimate legal protection. According to Law No. 13 of 2006 and the Supreme Court Circular No.4 of 2011 do not mention exemption of civil and criminal penalties against reporting witness/whistleblower, but in determining the convict the judge may sentence the lightest among other defendants by taking into account the public sense of justice.

Suggestions

In order to be able to realize Indonesia clear governance of corruption, it is necessary to immediately realize the special law on the status of reporting witness / special whistleblower concerning corruption in order to gain recognition of legitimacy. So that a reporting witness/whistleblower in exposing acts of corruption feels the existence of legal protection, this can help law enforcement authorities in uncovering acts of corruption.

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Statement of authorship

The author(s) have a responsibility for the conception and design of the study. The author(s) have approved the final article.

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