

Legal Protection for Corruption Crime Reporters (Whistle Blower) in Bandung High Court Decision Number: 32/PID.TPK/2022/PT BDG

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Abstract

Legal protection for reporting witnesses in criminal acts of corruption is part of and protects human rights, because witnesses in corruption cases are considered community participation to reveal criminal acts that are very detrimental to the state, so that the state has an obligation to protect the human rights of its citizens, will However, many people do not want/reluctant to become witnesses, for the reason that there is no clear legal protection, especially for witnesses reporting criminal acts of corruption. The role of someone who reports actions around them, especially within the agency where they work, or what is known as a whistle blower is very important in efforts to eradicate corruption in Indonesia. Therefore, the whistle blowing system must continue to be improved starting from the rules and implementation. The approach method used in this research is normative juridical research, namely analyzing written law, library materials and document studies are used as the main material while field data through interviews is used as supporting/complementary data. Data Analysis, after all secondary data has been obtained through library research, as well as supporting data from interviews, examination and evaluation are carried out to determine its validity, then the data is grouped into similar data. Qualitative data is interpreted juridically, logically, systematically using deductive and inductive methods. Indonesians are still afraid to become whistle blowers, because there are many risks that must be faced, and are even difficult to avoid. Threats of demotion, suspension, even firing, will occur. In fact, reporting someone related to a corruption case to law enforcement officials could also be dangerous for him. Therefore, it is necessary to provide legal protection for whistle blowers so that people are not afraid to become whistle blowers.

Keywords: corruption, investigation, whistle blower

INTRODUCTION

Legal protection for reporting witnesses in criminal acts of corruption is part of and protects human rights, because witnesses in corruption cases are considered community participation to reveal criminal acts that are very detrimental to the state, so that the state has an obligation to protect the human rights of its citizens, will However, many people do not want/reluctant to become witnesses, for the reason that there is no clear legal protection, especially for witnesses reporting criminal acts of corruption.

Corruption crimes always receive more attention than other criminal acts in various parts of the world. This phenomenon is understandable considering the negative impact it has on various areas of life. Corruption is declared a serious problem, this criminal act seriously endangers the security and stability of society, endangers socio-economic and political development, and even destroys the values of morality and democracy because this act seems to have become a culture. Corruption threatens the ideals of a just and prosperous society.

Corruption in Indonesia continues to show an increase from year to year. Both in terms of the number of cases that occurred and the amount of state financial losses. The quality of criminal acts of corruption carried out is also increasingly systematic with a scope that penetrates all aspects of community life. As happened in Cirebon, where SUPRIYADI Bin KANAFI, as Village Head (Kuwu) of Citemu, Mundu District, Cirebon Regency, held power in managing the finances and assets of Citemu Village in 2018, 2019 and 2020 or at least at other times in 2018, 2019 and 2020, located in Citemu Village, Mundu District, Cirebon Regency, Committing Corruption Crimes in accordance with the provisions of Article 35 paragraph (2) of Law Number 46 of 2009 concerning Corruption Crime Courts, "unlawfully committing acts of enriching oneself or others or a corporation that can harm the State's finances or the State's economy.

At the end of 2021, during the resolution of this case, a video circulated on social media of a person named Nurhayati, the head of financial affairs (kaur) of Citemu village, who at that time said that he felt unfair because he reported a corruption case committed by a former Citemu village head named Supriyadi, but he was the one who was involved. suspect. He admitted that he was disappointed with the performance of law enforcement officials and admitted that he was surprised because he was named a suspect in an alleged corruption case. And in resolving other legal problems so that Indonesia becomes more advanced.

After receiving a lot of criticism from the public, another investigation was carried out and the central government stepped in to provide a policy in this case. After the re-examination, Nurhayati's suspect status was revoked and she was declared innocent and able to return to work and carry out her usual activities. This condition is a strong reason why community participation is very necessary in eradicating criminal acts of corruption. And in resolving other legal problems so that Indonesia becomes more advanced.

The desire of the majority of the public to play a role in eradicating corruption is very high, but is eroded by a situation of lack of adequate protection when the public actively reports corruption cases. After changes to Law No. 13 of 2006 concerning Protection of Witnesses and Victims through Law no. 31 of 2014, the existence of whistleblowers is very important as one of the actors in disclosing criminal acts because previously, the law did not explicitly regulate the protection given to whistleblowers like the protection given to witnesses and victims of criminal acts. If we refer to the Criminal Procedure Code, the existence of the reporter has

actually been recognized as one of the subjects related to reports of criminal incidents. Article 1 number 24 of the Criminal Procedure Code states:

"A report is a notification submitted by a person because of a right or obligation under the law to an authorized official regarding a criminal incident that has occurred or is being or is suspected to be occurring."

In the context of eradicating criminal acts of corruption, Law No. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes clearly and clearly gives the public the right to report suspected criminal acts of corruption.

In general, there are two scopes of protection provided to whistleblowers, namely protection of legal status and protection of feelings of security.

1. Protection of legal status in the form of a guarantee cannot be prosecuted either criminally or civilly for reports that will be, are being, or have been given, unless the report is not given in good faith (Article 10 of Law No. 31 of 2014). In Law No. 31 of 2014 it is clearly obligated to postpone legal claims until the reported case is decided by the court and has permanent legal force (*inkracht*). However, the law also provides a gap for legal risks for whistleblowers when reports are not submitted in good faith. In the explanation, it is stated that, "not in good faith" is meant in the form of providing false information, perjury, and malicious conspiracy. Incomplete legal protection is provided to those reporting corruption. There is still the opportunity for legal risks for the reporter from the party being reported, usually the reporter will be reported back to law enforcement for committing defamation, and so on.
2. Protection of a sense of security. From a normative perspective, protection for a sense of security should be sufficient if implemented in accordance with the provisions regulated in the Law. However, in reality, policy implementation at the institutional level is often not in line with the standards set out in the law. Therefore, in some cases, the identity of the reporter in a corruption case can sometimes be revealed and become known to the public.

Forms of Corruption Crimes according to experts, including Syed Husen Alatas, say that corruption can be categorized into several forms, including:

- a. Transactive Corruption. This corruption is a type of corruption that is carried out based on a reciprocal agreement between the recipient and the giver of the benefits of both parties who are active with each other in trying to realize these benefits.
- b. Extortive Corruption (Extortion). This corruption is a type of corruption where there is an element of coercion, namely that the party giving is forced to bribe in order to prevent harm to people, their interests, or something that is important to them.
- c. Nepotistic Corruption (Consortium). This corruption is a type of corruption through illegally showing relatives or friends to hold a position, or actions that give preferential treatment in the form of money or other forms to them which is of course contrary to the provisions or norms in force.
- d. Investive Corruption. This corruption is a type of corruption in the form of providing services or goods without being directly related to a profit, but with the hope that a profit will be obtained in the future.
- e. Supportive Corruption (Support). This corruption is a type of corruption in the form of an attempt to create conditions that can strengthen, protect and perpetuate the corruption that is being carried out.

- f. Autogenic Corruption. This corruption is a type of corruption carried out by individuals in order to gain profits due to owning, knowing and understanding opportunities in the object of corruption that no one knows about.
- g. Defensive Corruption. This corruption is corruption carried out by victims of corruption to protect themselves from extortion efforts.

The role of someone who reports actions around them, especially within the agency where they work, or what is known as a whistle blower is very important in efforts to eradicate corruption in Indonesia. Therefore, the whistle blowing system must continue to be improved starting from the rules and implementation.

The general definition of a whistle blower is someone who reports an act against the law, especially corruption, around the organization or institution where he or she works. This person usually has adequate data and information regarding the unlawful act. The role of the whistle blower is very important in uncovering unlawful acts that occur in the institution. Indonesian society does not yet have a whistle blowing system and culture. Indonesians are still afraid to become whistle blowers, because there are many risks that must be faced, and are even difficult to avoid. Threats of demotion, suspension, even firing, will occur. In fact, reporting someone related to a corruption case to law enforcement officials could also be dangerous for him. Therefore, it is necessary to provide legal protection for whistle blowers so that people are not afraid to become whistle blowers.

RESEARCH METHODS

The approach method used in this research is normative juridical research, namely analyzing written law, library materials and document studies are used as the main material while field data through interviews is used as supporting/complementary data. Data Analysis, after all secondary data has been obtained through library research, as well as supporting data from interview results, examination and evaluation are carried out to determine its validity, then the data is grouped into similar data. Qualitative data is interpreted juridically, logically, systematically using deductive and inductive methods.

RESULT AND DISCUSSION

Legal theory is basically a continuation of efforts to research positive law, at least when we reconstruct the presence of theory clearly, legal theory is seen as an independent scientific discipline through a special object of study.

According to Hans Kelsen, legal theory is the science of applicable law and not just about the law as it should be. What he means by legal theory is pure legal theory, which can also be called positive legal theory. Pure legal theory or positive legal theory is meant because it only explains the law and attempts to clear the object of explanation from everything that has nothing to do with the law. As a theory, Hans Kelsen also explains what is meant by law and how this law exists.

Theory of Corruption Crimes

Corruption is a very serious form of crime, often carried out with careful and organized planning. This action is a violation of the social and economic rights of society as a whole, and has a detrimental impact on the foundations of the national economy. Apart from that, criminal acts of corruption also damage the nation's reputation in the eyes of the international world. So its eradication must be extraordinary, therefore action against perpetrators of criminal acts of

corruption must be specifically regulated.

According to A. Hamzah, corruption is actually a term that has a very broad meaning, so the approaches used to deal with corruption problems also vary.

Furthermore, according to A. Hamzah, the meaning of criminal acts of corruption, if interpreted literally, is: "Rottenness, depravity, ugliness, dishonesty, immorality, bribery, deviation from purity, insulting or slanderous words or utterances."

According to Leden Marpaung, the definition of criminal acts of corruption in a broad sense is: "A person's actions that harm state finances and which make government officials ineffective, efficient, clean and dignified."

The definition of criminal acts of corruption can also be found in the General Indonesian Dictionary: "Corruption is a bad act such as embezzling money, accepting bribes and so on".

Theory of Criminal Law

The aim of criminal law is to create peace on the basis of harmony between peace and order. These legal objectives will be achieved if there is harmony and legal certainty with legal balance so as to produce justice.

According to Van Appeldoorn as quoted by Budiono Kusumohamidjojo, the aim of law is an orderly, peaceful and balanced society. However, the problem is that legal order definitely produces public order, but public order is not necessarily the result of legal order. Legal order becomes legal order only because it contains justice and is supported by society as a subject of general law. However, public order does not necessarily contain justice, because it can be imposed by a force (for example an authoritarian government) which has an interest in a situation that is subject to it, rather than providing justice to society. So it is not an exaggeration to emphasize that the main function of law is to uphold justice.

The results of previous research are the researcher's efforts to find comparisons and then to find new inspiration for further research. In addition, previous studies help research position the research and show the originality of the research. This research is to find out what the principles of child protection are according to Indonesian laws and regulations and what protection can be provided by Indonesian criminal law regarding legal protection for whistleblowers of criminal acts of corruption (Whistle Blower) in the Bandung High Court Decision Number: 32/Pid.Tpk/2022/PT BDG. 1. Analysis of Judge's Decisions Regarding Corruption Crimes Study of Decision Number 272/PK/PID.Sus/2011. By Cempaka Indah. 2. Juridical Review of Corruption Crimes Committed by Employees of State-Owned Enterprises Study of Decision Number 41/Pid.Sus.TPK/2015/Pn.Mks/2017. By Azharul Nugraha Putra Paturusi

Case Analysis

From the explanation explained above, the criminal act of corruption by the defendant SUPRIYADI Bin KANAFI was proven to be valid and convincingly guilty of committing the appropriate criminal act and was threatened by indictment in Article 2 paragraph 1 Jo. Article 18 of Law No. 31 of 1999 after being amended and added to Law No. 20 of 2001 concerning the eradication of criminal acts of corruption.

CONCLUSION

At a certain point, the protection for whistleblowers of corruption crimes (Whistle Blower) in the Bandung High Court Decision Number: 32/Pid.Tpk/2022/PT BDG has not been maximally realized due to investigator errors in determining the suspect and the reporter as a result of which the reporter does not receive protection correctly, but after re-examination the suspect's status could be renewed as a witness. In this case the contents of Law no. 13 of 2006

concerning the Protection of Witnesses and Victims after being amended into Law No. 31 of 2014 concerning the Protection of Witnesses and Victims has provided protection to reporting witnesses, but the protection is not optimal because before being appointed as a reporter, they have already been designated as a suspect and have experienced various The pressure from the suspect label, in terms of the legislation, is still not optimal because it does not specifically regulate legal protection guarantees for reporting witnesses.

Obstacles in implementing protection for whistleblowers, where there is negligence and less than optimal investigation, which causes errors in determining suspects, which means that in the future, whistleblowers will be hesitant to report cases of suspected criminal acts of corruption or even other crimes for fear of being made suspects. During the investigation, the investigative team did not find strong evidence of Nurhayati's involvement, but they were immediately named a suspect. The Head of the Cirebon District Prosecutor's Office (Kejari), West Java, Hutamrin, denied that his party had asked the Cirebon Police to name Nurhayati as a suspect. Hutamrin said that his party could not intervene with the Cirebon Police investigation team.

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