

Legal protection for whistleblowers in uncovering fraud in government

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ABSTRACT

This study aims to examine the extent to which whistleblowers play a role in detecting fraud in government and how the legal system in Indonesia provides protection for whistleblowers. This study uses a type of qualitative research with a library research approach, namely binding legal materials consisting of basic regulations (the 1945 Constitution of the Republic of Indonesia and its amendments regarding the protection of a whistleblower in exposing). , fraud in government, as corruption is rampant so that it is appropriate for whistleblowers to receive legal protection. Provisions for legal protection for whistleblowers are implicitly contained in Law Number 13 of 2006 concerning Witness and Victim Protection Institutions and SEMA Number 2011 concerning Treatment of Actors (Persons), Complainant) and Author Witnesses who work together (Justice contributors). The types of whistleblowers provided by Indonesia are physical and psychological protection, special treatment when testifying in court, protection of legal status, and the possibility of compensation in the form of leniency.

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1. Introduction

Over time, the world of technology and communication has shown significant progress in openness and transparency that can be used to uncover corrupt practices in public institutions (Bertot, Jaeger, & Grimes, 2010). On the other hand, developments in technology and communication can present considerable opportunities for fraudulent practices. Fraud Defined as all forms of fraud, fraud, crime, and embezzlement that violate the rule of law. According to Manossoh (2016), factors of pressure (pressure), rationalization (rationalization) and opportunity (opportunity) are factors that trigger the occurrence of fraud known as triangle fraud.

Smith (2022), the most common categories of fraud include: First, false statements in financial statements, namely the actions of the company's internal management that manipulate the presentation of financial statements with the aim of making a profit. Second, misuse of assets owned by the company or those of other parties. Third, corruption is a form of fraud that is difficult to detect because of the cooperation between various parties. Research by Albrech et al. (2012) shows that corrupt practices are basically divided into several forms, namely conflicts of interest, economic extortion, bribery, and illegal contributions. Some people give an assessment of the government as an institution that must take sides and prioritize people's welfare is only a false promise and, in the end, corruption becomes an open secret of the government (Noviani & Sambharakreshna, 2014).

The problem of corruption has become one of the most phenomenal crimes in various parts of the world. The impact of criminal acts of corruption can have an impact on various areas of life, especially in the fields of economics and public finance. Corruption as behavior that deviates from the formal obligations of public office to obtain benefits or economic status for oneself and close family members (Bertot et al., 2010; Miethe, 2019). So that it can be said that this corrupt practice is a form of transaction in which one party surrenders something of value, such as money or other assets, to receive compensation in the form of influence over decisions in the government.

This corruption crime can be seen as a form of fraud that occurs in organizations and government agencies that require special attention and a comprehensive prevention strategy. One of the efforts to prevent and reduce fraudulent practices is to create a complaint channel known as whistleblowing. Whistleblowing plays an important role in the implementation of good oversight within the organization and within the company (Exmeyer & Jeon, 2022; Miethe, 2019; Rahman, 2020). Lately there have been many uses of whistleblowing to eradicate corruption cases in Indonesia.

system whistleblowing has helped the criminal justice system to detect and eradicate various types of organized crime. In this case it can be said that there is always a legal vacuum to detect and uncover any criminal acts that have occurred. Any crime compared to a corpse hiding for a long time would reek of its stench. Therefore, whistleblowing was created to encourage everyone to covertly report various possible fraud practices and all immoral activities inside and outside the organization (Nwosu, Nwoke, Ajibo, Nwodo, & Okoli, 2021). However, the success of whistleblowing is very dependent on the role of the whistleblower in uncovering the truth.

Whistleblower is defined as a profession in an organization or agency that broadcasts fraud that occurs within an agency that is believed to have violated the applicable laws and regulations and reports it to the authorities. Whistleblower is considered a noble figure because he sacrifices professionalism and personal aspects to reveal violations of business ethics (Eisenstadt & Pacella, 2018). But on the other hand, whistleblowers can also be considered as disgruntled employees who accuse people or companies of negligence, which they believe has harmed them (Barnett, 1992; Safitri, 2022).

Whistleblowing is generally carried out by employees who are part of an organization and want to spread the occurrence of an illegal act or violation within the organization to the wider community (Rahman, 2020; Safitri & Silalahi, 2019). But, according to the results of a 2007 Business Ethics Institute survey, it was found that one in four employees knew that a violation had occurred, but 52% who knew about the violation remained silent and did nothing. The possibility for an employee when he becomes aware of illegal or fraudulent activities in his organization is to let him go, tell his colleagues, tell his friends through the internal channels of the organization or to parties outside the organization (Barlett, Kotrlik, & Higgins, 2001; Miceli, Near, & Dworkin, 2008).

With increasing corruption in Indonesia, law is expected to play a role as a means and instrument to regulate public order and restore balance in the life of society, nation, and state. Various efforts

have been made by the government by enacting various types of laws and regulations aimed at preventing and eradicating criminal acts of corruption, including Law Number 31 of 1999 concerning Eradication of Corruption Crimes. However, corruption cases in Indonesia are recorded at quite high numbers until 2020. So that it can be said that the role of the whistleblower can be used as the right solution to reduce criminal acts of corruption in our country.

There are several problems that are often faced by a whistleblower, including the absence of any whistleblowing that makes company employees doubtful and afraid of the consequences after they file a fraud complaint at their company. In addition, whistleblowers have not received proper recognition, lack of support, protection, or even proper appreciation. Until now, there are no laws and regulations in Indonesia that specifically regulate whistleblowers. The weak guarantee of legal protection for the importance of the role of the reporter in the criminal process for the sake of disclosing the material truth of a crime requires legal arrangements that regulate the protection of the reporter in detail and strictly. Based on the problems above, the purpose of this study is to examine the extent to which whistleblowers play a role in detecting fraud in government and how the legal system in Indonesia provides protection for whistleblowers.

2. Method

The research methodology used in this study uses a qualitative research type with a library research approach. Qualitative research is research that aims to analyze and better understand events that occur in society (Crabtree & Miller, 2022; Creswell & Creswell, 2017). The type of data used in this study is focused on secondary data (Miles, Huberman, & Saldaña, 2014). The secondary data sources include primary legal materials, namely binding legal materials consisting of basic regulations (the 1945 Constitution of the Republic of Indonesia and its amendments) and statutory regulations relating to research topics or materials. The secondary legal materials used are legal materials which provide further explanation regarding primary legal materials in the form of books, journals, research results, and other literature related to the problems in this research, namely how the legal protection of the role of whistleblowers in detecting fraud in government. Furthermore, the data obtained will be examined to explain the research problem.

3. Results and Discussion

3.1. Cases Whistleblower in Indonesia

Nowadays, Indonesia is no stranger to fraud cases that have appeared in various fields and have become the focus of public attention. Fraud potential loss for an organization or business. Fraud is not limited to bribery and theft, but also fraud. Fraud also includes withholding documents or reports, falsifying documents for business purposes, or providing confidential business information to parties outside the business without the knowledge of the relevant authorities. Various ethical violations resulted in accounting scandals that led to the collapse of several of the world's major corporations, including Enron and Worldcom. The scandal, which was seen as the company's fault, was widely exposed because of the role of accounting students in reporting errors or fraud. Accounting students who are afraid to report business weaknesses are called whistleblowers. So far, the act of reporting is called a whistleblower.

Whistleblowers are an important element in strengthening public accountability because the development of a whistleblower system can reduce unethical actions by officials in government administration, such as corruption, misadministration, mismanagement of inappropriate financial decisions and bureaucracy leading to policies that have the potential to negatively impact the environment and public health. Prior to the existence of the whistleblower, these unethical actions were often reported in the mass media, but the media did not have the official authority to investigate and correct such unethical actions directly. In addition, the media also lacks a mechanism to protect those who disclose unethical actions (Aida, Helmy, & Setiawan, 2019).

Lately the term whistleblower has become increasingly popular in Indonesia. The term whistleblower has become known in the community, especially since the emergence of several cases in Indonesia. Whistleblower is someone who for the first time discloses or reports a criminal act or unlawful act at work because of good faith (not a personal claim), against a certain company policy or based on bad faith or slander. Becoming a whistleblower is not an easy decision because

whistleblowers are required to be loyal to the organization, so becoming a whistleblower can damage the name of the organization (Stein, 2021; Truelson, 2019). According to Azzahra (2021) that someone who can be classified as a Whistleblower must meet the following criteria a) whistleblowers submit or disclose their reports to the relevant authorities or to the media or the public. By disclosing to the authorities or to the media, it is hoped that alleged criminal acts can be found and revealed; whistleblowers are “insiders” who disclose alleged violations and crimes that occurred in their workplace. Because crime scandals are always organized, whistleblowers sometimes become part of the criminals or the mafia itself. He gets involved in a scandal and then learns a crime has occurred. Thus, the whistleblower knows a crime or a suspicious crime because he committed or worked in an organized group of people suspected of committing a crime in a company, community, or government organization; and that the report submitted by the whistleblower is a fact or is known by the whistleblower and is not false or slanderous.

The growth of whistleblowers in developed countries such as the United States is bolder than Asian countries (Gunawan, 2019). Even in the United States (US), private companies, especially those that have gone public, are required to create a reporting system that allows whistleblowers to report a violation. This obligation is governed by the Sarbanes-Oxley Act passed in 2002. The Sarbanes-Oxley Act was a law passed to prevent financial irregularities in three public companies, including the frequent irregularities in financial statements prepared by accounting firms. is an organization that specifically handles whistleblowers in the private sector. For example, Mission Australia. This organization has a strong commitment to behavior that prioritizes legal, ethical, and corporate ethical standards.

In Indonesia, many people can be classified as whistleblowers in the private sector or corporate. For example, Vincentius Amin Sutanto, a former employee of PT. Asian Agri, which exposed the trillions of rupiah tax manipulation scandal, is a giant plantation company belonging to the Sukanto Tanoto group. Apart from Vincent, there is Yohanes Waworuntu, the shadow director of PT. Sarana Rekatama Dinamika, a company affiliated with the Bhakti Investama Business Group owned by Hary Tanoesoedibjo, made hundreds of billions when he became the operator of the Legal Entity Management System (sisminbakum) of the Ministry of Law and Human Rights. There is also the Khairiansyah case, the Agus Condro case, the case of Kompol Susno Duadji who denounced corruption in the institution where they worked.

The role of the whistleblower as described earlier is essentially very important for law enforcement, precisely in preventing and eradicating organized crime such as corruption and other criminal acts which will ultimately protect the state from more serious losses or in other words that the existence of a whistleblower has an important role in disclosing corrupt practices that occur within an organization, both government and private.

3.2. The Role of the Whistleblower in Disclosing Fraud Risks

faced by businesses include integrity risks, namely the risk of fraud on the part of management or business employees, the possibility of illegal or other unusual behavior, reduces the company's good reputation or reputation in the business world, or may reduce the company's ability to maintain survival. The existence of these risks forces internal auditors to develop preventive measures to prevent fraud (fraud). Most evidence of fraud is circumstantial. Evidence of fraud (fraud) is often indicated by the appearance of symptoms such as changes in one's lifestyle or behavior, dubious documents, complaints from customers or suspicions from colleagues. At first this deficiency will cause the appearance of certain characteristics, either the environment or circumstances, as well as a person's behavior.

Fraud or deception is an act of deliberate deception that causes losses that are not realized by the victim or the victim and benefits themselves and the group of perpetrators of fraud. When the person who commits this fraud is only interested in his own personal gain. In this condition, there is cooperation from several parties in committing fraudulent acts, so that cooperation occurs to fulfill the personal interests of the individual who commits the fraudulent act. Under SAS 99, fraudulent financial reporting can be committed by a) manipulate, falsify, or alter accounting records and supporting documents for prepared financial reports; b) deliberately omitting or omitting material information in the financial statements; and c) intentional misuse of guidelines regarding the amount, classification, presentation, or method of information.

According to Smith (2022), fraudulent financial statements are intentional or reckless actions to do or not do something that should be done, causing financial statements to be significantly misleading. Due to the difficulty of disclosing fraud that has occurred, whistleblowing is considered the most effective method for reporting fraud that has occurred reporting whistleblower in disclosing fraudulent financial statements is acknowledged not only by accountants and regulators in the United States but also in other countries (Miethe, 2019).

Fraud and other forms of fraud cannot be completely avoided in business. However, this action can be minimized by the company by providing an alert system to all employee's system whistleblower will help companies receive reports of fraudulent practices and prevent employees and former employees from publicly disclosing fraud without the company's knowledge system whistleblower must provide comfort and a sense of security to employees who want to ask questions or report things that are deemed necessary. In addition, of course, the system must be able to facilitate two-way communication, namely between the report giver and the company.

A whistleblower is a person who states or gives testimony about a crime to law enforcement officials, who can be understood as a witness, but also a person who is suspected of or involved in a crime and whose testimony must first testify. can reveal that a crime has been committed. A whistleblower is an important tool for fighting organized crime, such as corruption allegations. As insiders, as part of the environment in which the informants leaked, of course, they fully understand what and how criminal patterns have been carefully packaged and kept secret from the public and law enforcement agencies.

Whistleblowers have an important role in implementing whistleblowing in an organization or business (Exmeyer & Jeon, 2022; Safitri, 2022). The Whistleblower System functions as a tool used by whistleblowers to report crimes and fraud committed by employees of an agency or organization. The whistleblower system is created to maintain the confidentiality of the reporter so that when reporting a fraud, the confidentiality of the reporter is guaranteed, so that when reporting a fraud, more people are not afraid of being affected. with what he brought.

Some of the key factors and issues in the implementation of the alert system, in particular the building of a culture of mutual trust and openness, available methods and channels, anonymous good complaints, deviations that can be reported, investigation, monitoring and reporting procedures, prohibited forms of retaliation, and policies on reporter immunity from disciplinary and legal actions (Truelson, 2019). With the existence of whistleblowing, it is hoped that it can reduce the level of fraud in an agency or organization, and more and more people inside and outside the company are not just silent when they see fraud in the organization or agent. Because, with a whistleblower, their security and confidentiality can be maintained so that they are no longer afraid of the negative impacts they will suffer, such as losing their jobs.

3.3. Protection for Whistleblowers

According to Stein (2021), the problems that are often faced by whistleblowers are not getting a good evaluation, lack of support, protection, let alone proper appreciation or appreciation for them. The existence of a whistleblower is an important role that can break the chain of legal mafia and criminal acts of corruption, so it is only natural that whistleblowers need it protected by law. There are (two) reasons why reporters need legal protection, as follows a) a whistleblower acts like a journalist who dares to cover a reported criminal act of corruption, and is involved, so the whistleblower must be appreciated; and b) a whistleblower has the role of exposing the existence of an unusual criminal organization network. Whistleblower Receives threats, both to himself and his family, so that the safety of a whistleblower as a witness who reports or submits a complaint is very risky, therefore special protection is needed from the government.

Provisions for whistleblowers in the Indonesian legal system are regulated by laws and regulations which are formulated explicitly and implicitly. The effectiveness of legal protection for whistleblowers in disclosing corruption cases in Indonesia starts from the aspect of protecting victims and witnesses, in this case whistleblowers. In its implementation, the Witness and Victim Protection Office is an organization whose duties and authorities provide protection and other rights to witnesses and/or victims, in accordance with Law No. 31 of 201 concerning the protection of witnesses and victims.

Protection and rewards for whistleblowers reporting whistleblower, so that the handling of cases reported by whistleblowers must take precedence over those reported by the reporter. In addition to the SEMA number. April 2011, in accordance with the provisions of Law no. On 13 of 2006 concerning Witness and Victim Protection, the Witness and Victim Protection Agency (LPSK) has the authority to protect witnesses and victims. However, the law does not explicitly state what is meant by a whistleblower, nor does it explicitly state that the law also protects whistleblowers.

In the Indonesian justice system, three levels of urgency can be expressed regarding the importance of legal protection for whistleblowers, namely: first protection whistleblower in the Indonesian justice system is necessary because existing laws do not guarantee adequate protection. from the accuser. Second Protection whistleblower in the Indonesian justice system is important to ensure the safety of the reporter and his family. Third, the role of the whistleblower as a key witness or disclosure witness is very important, especially when major corruption cases in Indonesia are uncovered through the assistance of reporters.

According to Azzahra (2021), safeguards that can be given to whistleblowers to get a sense of security can be in the form of safeguarding their physical and psychological aspects. Physical and psychological protection not only protects individuals from all forms of threats, terrorism, violence, pressure, self-harm, life, and property in any form, but must also include ensuring the physical and psychological protection of their families (Burhan, 2019). Strictly speaking whistleblowers can be safer, calmer, and more comfortable conveying reports, information, and information at all stages of review and without burden or pressure. As part of safeguarding feelings of security, technical, physical, and psychological protection for complainants and their families can be accommodated as much as possible in Article 5 Paragraph (1) of Law No. 13 of 2006 together with Law No.31 of 2014, stipulates that the rights of witnesses and victims include protection of personal and family security and the absence of threats related to the testimony that he will give, is currently giving or has given.

Based on the several laws and regulations above, it appears that in the Indonesian legal system the arrangements regarding whistleblowers are strictly regulated. However, the problem lies in the application and execution steps. So, the basic thing that must be done is socialization and consistent enforcement so that the public or whistleblowers are not afraid to provide information and reveal the violations committed. With the protection of reporters, it is hoped that there will be more and more reporters who really dare to reveal an alleged violation or criminal act that is rife in Indonesia, especially in corruption cases. The emergence of multiple truth-disclosures in corruption cases plays an important role in detecting, preventing and eradicating corruption in Indonesia (Gunawan, 2019).

4. Conclusion

During the COVID-19 pandemic, learning Arabic experienced many problems. The curriculum is the main foundation for achieving learning goals currently. Because the concept of developing a learning curriculum must be adapted to the conditions of online learning or distance learning. This curriculum includes 4 components, namely: 1) learning objectives, the objectives of learning Arabic during the pandemic were still focused on language as a global communication tool and Arabic as a global communication tool and understanding religion from Arabic-language sources. Of course, it still adapts to current learning in the 21st century. 2) Content/material, it is hoped that the teacher will focus on the content or how the material is delivered to students and does not aim to complete the material, also hope that the material is in a contextual form so that students can understand it more in the real world. 3) The learning process, including strategies, methods, media which had to be adjusted during the Covid 19 pandemic, the use of technology is very much needed to support learning and must still be disseminated to students and parents so that learning takes place well. 4) Evaluation, evaluation is carried out not only on learning outcomes, but also on the learning process that needs to be evaluated to improve and optimize learning objectives. This research is limited to curriculum design for learning Arabic, so further research is needed to practically test the effectiveness of this curriculum design.

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