

# Reconstruction of Legal Protection for Civil Servants as Whistleblowers in Eradicating Corruption Crimes in Indonesia

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## Abstract

Corruption in Indonesia remains a pervasive and deeply entrenched issue, severely undermining public trust, hindering development, and destabilizing governance. Addressing corruption requires robust mechanisms, especially the protection of whistleblowers—particularly civil servants (*Aparatur Sipil Negara*, ASN)—who play a critical role in exposing corruption within public institutions. However, ASN whistleblowers face significant challenges, including retaliation, lack of legal protections, insufficient reporting channels, and limited incentives, which hinder their effectiveness and deter reporting. This study investigates the existing legal frameworks for protecting ASN whistleblowers, assessing their implementation and effectiveness, and proposing necessary reforms. Through qualitative legal research,

including primary and secondary legal materials and interviews with key informants, the research identifies significant shortcomings in Indonesia's whistleblower protection laws. These gaps—such as inadequate safeguards, procedural inefficiencies, and limited institutional support—expose whistleblowers to retaliation, weakening anti-corruption efforts. The findings emphasize the urgent need for comprehensive legal reforms to enhance whistleblower protection, ensuring their safety, security, and empowerment. By filling this critical gap, the study contributes to strengthening Indonesia's anti-corruption initiatives and highlights the essential role of whistleblowers in fostering transparency and accountability. This research calls for policymakers to prioritize whistleblower protection as a core component of the nation's anti-corruption strategy, offering actionable recommendations to improve legal frameworks and institutional support. In doing so, it underscores the need for urgent reforms to combat corruption and promote a culture of accountability in Indonesia's public sector.

**Keywords** *Civil Servants, Corruption, Legal Protection, Qualitative Approach, Whistleblower*

## Introduction

Corruption in Indonesia has evolved into a deeply entrenched and systemic issue, permeating all aspects of society.<sup>1</sup> It is no longer regarded as a mere criminal act but as a complex, endemic phenomenon that has become increasingly organized and sophisticated over the years.<sup>2</sup> The Indonesian government recognizes this challenge, as explicitly stated in Law No. 31 of 1999, later amended by Law No. 20 of 2001 concerning the Eradication of Corruption. This law emphasizes that corruption not only inflicts significant financial losses on the state but also hinders national development and economic stability. Consequently, combating

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<sup>1</sup> Meuthia Ganie-Rochman, and Rochman Achwan. "Corruption in Indonesia's emerging democracy." *Journal of Developing Societies* 32, no. 2 (2016): 159-177

<sup>2</sup> Deassy JA Hehanussa, and Albert Pedé. "Legal ethics for tracing the roots of corruption in Indonesia." *Journal of Law Science* 6, no. 3 (2024): 424-433

corruption is a necessity to achieve a just and prosperous society as envisioned in the 1945 Constitution.

From a legal perspective, corruption presents unique challenges compared to traditional criminal acts.<sup>3</sup> Its dynamic and evolving nature requires innovative legal frameworks and enforcement strategies.<sup>4</sup> The provisions related to corruption are comprehensively outlined in Articles 2 to 20 of the Anti-Corruption Law, with additional regulations in Articles 21 to 24. These legal measures aim to address the misuse of authority and systemic abuse prevalent in various levels of governance. Nevertheless, traditional law enforcement methods alone are insufficient, necessitating a forward-thinking approach that encompasses robust legislation, policies, and judicial actions.<sup>5</sup>

Corruption is not an issue confined to Indonesia; it is a global concern threatening societal stability, ethical values, and justice.<sup>6</sup> The international community recognizes corruption as a severe impediment to sustainable development and legal governance.<sup>7</sup> This recognition has led to the establishment of global conventions and regulations aimed at curbing corrupt practices worldwide. In Indonesia, corruption is categorized as an extraordinary crime, given its multifaceted negative impacts, including financial losses and the violation of citizens' social and economic rights.<sup>8</sup>

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<sup>3</sup> Tina Søreide, *Corruption and Criminal Justice: Bridging Economic and Legal Perspectives*. (London: Edward Elgar Publishing, 2016).

<sup>4</sup> Issa Luna-Pla, and José R. Nicolás-Carlock. "Corruption and complexity: a scientific framework for the analysis of corruption networks." *Applied Network Science* 5, no. 1 (2020): 13.

<sup>5</sup> Jacinta M. Gau, and Nicholas D. Paul. "Police officers' role orientations: Endorsement of community policing, order maintenance, and traditional law enforcement." *Policing: An International Journal* 42, no. 5 (2019): 944-959

<sup>6</sup> Michael Johnston, and Scott Fritzen. *The Conundrum of Corruption: Reform for Social Justice*. (London: Routledge, 2020); Isomiddinov Yunusjon Yusubboevich, "Philosophical Issues of the Fight Against Corruption in Government and Society." *International Journal of Management* 11, no. 12 (2021): 2020.

<sup>7</sup> Claudel Mombeuil, and Hemantha Premakumara Diunugala. "UN sustainable development goals, good governance, and corruption: The paradox of the world's poorest economies." *Business and Society Review* 126, no. 3 (2021): 311-338.

<sup>8</sup> Fadli Januaris, M. Khairul Arwani, Adi Jumanda, Ilham Utama Yazid, Yernati Ulfazah, and Rahimatul Fikri. "Combating corruption in Indonesia through Islamic criminal law and customary criminal law." *Hakamain: Journal of Sharia and Law Studies* 2, no. 2 (2023): 221-231; Diandra Preludio Ramada, and Indah

The systemic influence of corruption affects Indonesian society profoundly, from perpetuating inequality to exacerbating poverty.<sup>9</sup> Mismanagement of large budgets without adequate oversight provides fertile ground for corrupt practices.<sup>10</sup> This undermines governmental efficiency and erodes public trust in political systems. The consequences extend beyond financial losses, diminishing the quality of public services, and weakening the nation's social fabric. Public distrust often manifests in perceptions of political corruption, further damaging the credibility of institutions.<sup>11</sup>

Elias Zadrack Leasa highlights the detrimental effects of corruption, describing it as a pervasive force undermining the nation's foundations.<sup>12</sup> Efforts to combat corruption have been guided by existing laws, notably Law No. 31 of 1999 and its amendment in Law No. 20 of 2001. These regulations emphasize the abuse of power by individuals in positions of authority. According to Article 3 of the Anti-Corruption Law, the misuse of authority is inherently tied to the privileges and resources associated with official positions, often exploited for personal or unauthorized purposes.

The misuse of authority, especially within the civil service, remains a significant driver of corruption in Indonesia.<sup>13</sup> Public officials, including civil servants, known as *Aparatur Sipil Negara* (ASN), are tasked with managing public services and resources.<sup>14</sup> However, the

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Sri Utari. "Unveiling the Surge in Corruption: A Menacing Threat to Indonesia's Stability in Anti-Corruption Law Reform." *Journal of Law and Legal Reform* 5, no. 1 (2024): 179-200.

<sup>9</sup> Ramada, and Utari.

<sup>10</sup> David C. Nwogbo, and Akhakpe Ighodalo. "Governance and corruption in Nigeria." *Journal of Good Governance and Sustainable Development in Africa* 6, no. 2 (2021): 81-97

<sup>11</sup> Jan-Willem Van Prooijen, Giuliana Spadaro, and Haiyan Wang. "Suspicion of institutions: How distrust and conspiracy theories deteriorate social relationships." *Current Opinion in Psychology* 43 (2022): 65-69.

<sup>12</sup> Elias Zadrack Leasa, "Eksistensi Ancaman Pidana Mati Dalam Tindak Pidana Korupsi Pada Masa Pandemi Covid-19." *Jurnal Belo* 6, no. 1 (2020): 73-88.

<sup>13</sup> Romli Arsad, "Obstacles and Challenges in Law Enforcement Against Corruption in Public Services." *Russian Law Journal* 11, no. 3 (2023): 3331-3339.

<sup>14</sup> Shinta Hadiyantina, "The most appropriate strategy to enhance civil servants' neutrality in the governance." *Journal of Economic and Administrative Sciences* 37, no. 1 (2021): 61-78.

absence of stringent oversight and ethical compliance creates opportunities for corruption. Civil servants, comprising permanent employees, as known as *Pegawai Negeri Sipil* (PNS), and contractual staff, as known as *Pegawai Pemerintah dengan Perjanjian Kerja* (PPPK), play a critical role in maintaining governmental integrity and accountability.

Several factors contribute to corruption, as outlined by Wijayanto Ridwan Zachrie.<sup>15</sup> These include decision-making authority in public policies, economic rent-seeking behaviors, and the violation of established systems. Public officials often exploit financial opportunities arising from policy decisions, leading to systemic corruption.<sup>16</sup> Addressing these root causes requires a holistic approach that combines strict regulatory measures with ethical governance practices.

Under Government Regulation No. 53 of 2010 on Civil Servant Discipline, civil servants are obligated to uphold principles such as loyalty, honesty, fairness, transparency, and accountability. These principles are vital for fostering good governance and curbing corrupt practices. However, the effectiveness of these regulations is contingent upon their consistent enforcement and the commitment of civil servants to adhere to ethical standards.

Law No. 20 of 2023 on Civil Service further emphasizes the importance of professionalism, ethical conduct, and independence from political interference for civil servants. The law mandates that public officials maintain integrity and resist practices of corruption, collusion, and nepotism. Despite these regulations, the perception of inadequate public service delivery continues to undermine trust in civil servants and the broader governance system.<sup>17</sup>

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<sup>15</sup> Wijayanto Ridwan Zachrie, *Korupsi Mengorupsi Indonesia*. (Jakarta: Gramedia Pustaka Utama, 2013).

<sup>16</sup> Giulia Mugellini, Sara Della Bella, Marco Colagrossi, Giang Ly Isenring, and Martin Killias. "Public sector reforms and their impact on the level of corruption: A systematic review." *Campbell Systematic Reviews* 17, no. 2 (2021): e1173.

<sup>17</sup> Despite the provisions in Law No. 20 of 2023 emphasizing professionalism, ethics, and independence from political influence, several challenges persist in Indonesia's civil service. Public service delivery remains inefficient, leading to widespread dissatisfaction and mistrust among citizens. Corruption, collusion, and nepotism continue to undermine integrity, despite legal mandates to prevent such practices. Political interference also remains a significant concern, with some civil servants still influenced by political agendas, compromising their neutrality. Additionally,

The concept of whistleblowing has gained prominence as a mechanism to combat corruption within organizations.<sup>18</sup> Originating from the term used for law enforcement officers alerting to unlawful acts, whistleblowing involves the confidential disclosure of misconduct or illegal activities by insiders.<sup>19</sup> Whistleblowers play a crucial role in exposing corruption, particularly within public institutions, by providing evidence to relevant authorities or the public.<sup>20</sup>

Abdul Haris Semendawai outlines specific criteria for whistleblowers, including their role as insiders who expose wrongdoing within their organizations.<sup>21</sup> However, whistleblowers often face significant risks, including retaliation and ostracization, due to the organized nature of corruption networks.<sup>22</sup> This highlights the need for robust legal protections and incentives to encourage whistleblowing as a tool for transparency and accountability.

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the lack of accountability for poor performance and misconduct within the civil service further erodes public confidence in the effectiveness of government institutions. *See also* Anas Santoso, and Usman Usman. "Neutrality of the State Civil Apparatus in the Democratic Party of Regional Head Election (Pilkada)." *Unnes Law Journal* 7, no. 2 (2021): 203-224; Dani Muhtada, "The Prospects for Public Management Reform in Indonesia." *Journal of Indonesian Legal Studies* 2, no. 2 (2017): 145-154; Yulius Kartikojati, Dwi Pratiwi Markus, and Hadi Tuasikal. "The Effectiveness of Witness and Victim Protection Institutions as Non-Structural Institutions." *JHR (Jurnal Hukum Replik)* 12, no. 2 (2024): 331-347.

<sup>18</sup> Marianna Fotaki, "Whistleblowers counteracting institutional corruption in public administration." In *Handbook on Corruption, Ethics and Integrity in Public Administration* (London: Edward Elgar Publishing, 2020), pp. 421-433.

<sup>19</sup> Agus Joko Pramono, and Mohamad Iqbal Aruzzi. "The implementation of a whistleblowing system as an anti-corruption initiative in Indonesian government institutions." *Integritas: Jurnal Antikorupsi* 9, no. 2 (2023): 195-212.

<sup>20</sup> Gedion Onyango, "Whistleblowing behaviours and anti-corruption approaches in public administration in Kenya." *Economic and Political Studies* 9, no. 2 (2021): 230-254.

<sup>21</sup> Abdul Haris Semendawai, "Penetapan Status Justice Collaborator bagi Tersangka atau Terdakwa dalam Perspektif Hak Asasi Manusia." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 3, no. 3 (2016): 468-490.

<sup>22</sup> Olabisi D. Akinkugbe, "Informal networks of corruption: assessing the challenges for public sector whistleblowing in Nigeria." *Jindal Global Law Review* 9 (2018): 11-28.

Despite the potential of whistleblowing, Indonesian civil servants remain hesitant to report corruption due to inadequate legal safeguards.<sup>23</sup> Data from the Indonesian Corruption Watch (ICW) in 2021 indicate that civil servants constitute a significant proportion of individuals involved in corruption cases.<sup>24</sup> This underscores the urgent need for comprehensive whistleblower protection laws to empower civil servants to report corrupt practices without fear of reprisal.

Existing legislation, such as Law No. 31 of 2014 on Witness and Victim Protection, provides a framework for safeguarding whistleblowers. The law grants rights to witnesses and victims, including personal security, confidentiality, and legal assistance. However, these provisions must be expanded and effectively implemented to address the unique challenges faced by whistleblowers within the public sector. Research on whistleblowing mechanisms and their effectiveness in combating corruption in Indonesia remains limited, particularly regarding the specific role of ASN and the implementation of whistleblower protection laws.<sup>25,26</sup> While numerous studies have addressed the broader challenges of corruption and governance, few have explored the relationship between whistleblower protections and the willingness of civil servants to report corrupt practices.<sup>26,25,26,27</sup> To address this gap, the current research identifies several key questions for investigation. First, the study examines how existing mechanisms for

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<sup>23</sup> Ach Maulidi, Muhammad Wisnu Girindratama, Anton Robiansyah Putra, Rida Perwita Sari, and Dian Anita Nuswantara. "Qualitatively beyond the ledger: unravelling the interplay of organisational control, whistleblowing systems, fraud awareness, and religiosity." *Cogent Social Sciences* 10, no. 1 (2024): 2320743.

<sup>24</sup> Agus Joko Pramono, and Mohamad Iqbal Aruzzi. "The implementation of a whistleblowing system as an anti-corruption initiative in Indonesian government institutions."

<sup>25</sup> Natalia Vebrianti, and Temy Setiawan. "Whistle Blowing System Based on Indonesia Case Study: Qualitatives Research." *Saudi Journal of Business and Management Studies* 9, no. 7 (2024): 113-122.

<sup>26</sup> Gedion Onyango, "Whistleblower protection in developing countries: a review of challenges and prospects." *SN Business & Economics* 1, no. 12 (2021): 169; Oliver Nnamdi Okafor, Festus A. Adebisi, Michael Opara, and Chidinma Blessing Okafor. "Deployment of whistleblowing as an accountability mechanism to curb corruption and fraud in a developing democracy." *Accounting, Auditing & Accountability Journal* 33, no. 6 (2020): 1335-1366; Christopher A. Cooper, "Encouraging bureaucrats to report corruption: human resource management and whistleblowing." *Asia Pacific Journal of Public Administration* 44, no. 2 (2022): 106-130.

protecting ASN who report corruption are being implemented, with a focus on evaluating their effectiveness and identifying limitations. Second, it investigates the adequacy of current legal protections available for ASN whistleblowers in their efforts to combat corruption. By analyzing the strengths and shortcomings of the existing legal framework, the study aims to highlight areas in need of reform. Finally, the research seeks to propose a comprehensive and forward-looking legal framework to strengthen the protection of ASN whistleblowers, ensuring their safety and fostering active participation in anti-corruption efforts.

## Theoretical Framework

The theoretical framework of this research is built upon interconnected theories that provide a foundation for evaluating and integrating relevant legal sources. The primary hypothesis suggests that legal politics is fundamental to the analysis, particularly in reconstructing the implementation guidelines for Article 5 of Law No. 31 of 2014. This article outlines the rights of witnesses and victims, including but not limited to personal and familial security, freedom from coercion, access to legal and linguistic support, confidentiality, and assistance with relocation or identity change. These protections are designed to Civil Servants, known as ASN acting as whistleblowers in the fight against corruption in Indonesia. The theories applied in this research offer a structured framework for addressing these legal challenges and presenting methodological solutions.

This study distinguishes itself by employing a multidisciplinary approach, incorporating legal dogmatics, legal theory, and legal philosophy. This integration underscores the unique nature of legal studies as a *sui generis* discipline. The aim is to examine the issues surrounding the restoration of legal protection for civil servants who act as whistleblowers in corruption cases in Indonesia.

### *A. Theory of Justice*

The concept of justice is central to this research. Justice emphasizes decisions and actions grounded in immutable standards.<sup>27</sup> It is inherently

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<sup>27</sup> Agus Santoso, *Hukum, Moral dan Keadilan: Sebuah Kajian Filsafat Hukum*. (Jakarta: Kencana, 2012).



relative, as perceptions of fairness vary depending on individuals and contexts.<sup>28</sup> Aristotle's perspective on justice, particularly distributive justice, is integral to this study.<sup>29</sup> Aristotle defines justice as a virtue of human action, striking a balance between excess and deficiency.<sup>30</sup> Distributive justice focuses on the equitable allocation of honors, wealth, and societal goods, advocating for the assignment of rights based on merit and contextual appropriateness, rather than absolute equality.<sup>31</sup>

In the context of Indonesia's legal framework, distributive justice aligns with the principle that national laws serve as a guiding umbrella for subordinate regulations, ensuring consistency and enforceability.<sup>32</sup> This theoretical approach provides a robust foundation for evaluating the legal protections afforded to civil servant whistleblowers, ensuring their rights are upheld equitably within the broader legal and social systems. Furthermore, this framework also is crucial for analyzing and addressing the challenges of safeguarding whistleblower rights, contributing to the wider discourse on legal protections in combating corruption.

### ***B. Theory of Participation***

The theory of participation, as articulated by Mikkelsen<sup>33</sup>, is employed to analyze research question, which investigates the role of community involvement in protecting whistleblowers. This theory defines participation through six perspectives:

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<sup>28</sup> Riky Sembiring, "Keadilan Pancasila dalam Persepektif Teori Keadilan Aristoteles." *Jurnal Aktual Justice* 3, no. 2 (2018): 139-155.

<sup>29</sup> Yovi Cajapa Endyka, Muhamad Muhdar, and Abdul Kadir Sabaruddin. "Environmental Justice in Intra Generations: An Overview of Aristotle's Distributive Justice to Coal Mining." *Indonesian Comparative Law Review* 3, no. 1 (2020): 25-34.

<sup>30</sup> Ana Suheri, "Wujud Keadilan dalam Masyarakat di Tinjau dari Perspektif Hukum Nasional." *MORALITY: Jurnal Ilmu Hukum* 4, no. 1 (2018): 60-68.

<sup>31</sup> Aashis Joshi, Emile Chappin, and Neelke Doorn. "Does distributive justice improve welfare outcomes in climate adaptation? An exploration using an agent-based model of a stylized social-environmental system." *Sustainability* 13, no. 22 (2021): 12648.

<sup>32</sup> Lütüfihak Alpkın, Melisa Karabay, İrge Şener, Meral Elçi, and Bora Yıldız. "The mediating role of trust in leader in the relations of ethical leadership and distributive justice on internal whistleblowing: a study on Turkish banking sector." *Kybernetes* 50, no. 7 (2021): 2073-2092.

<sup>33</sup> Britha Mikkelsen, *Methods for Development Work and Research: A New Guide for Practitioners*. (London: SAGE, 2005).

- a. Voluntary contributions from the community to a project without decision-making involvement.
- b. Community sensitization to enhance willingness and capacity to respond to projects.
- c. Active processes where individuals or groups take initiative and exercise freedom in specific actions.
- d. Dialogues between local communities and project stakeholders to gather information on local contexts and social impacts.
- e. Voluntary community involvement in self-determined change.
- f. Community participation in the development of their lives and environments.

The application of participation theory highlights the essential role of community engagement in protecting whistleblowers.<sup>35</sup> For sustainable whistleblower protection, future strategies must include active community participation, fostering collective responsibility and a shared commitment to combating corruption.<sup>34</sup> This theory emphasizes the dynamic role of communities in shaping and supporting legal mechanisms for protecting whistleblowers, especially civil servants.<sup>35</sup>

### ***C. Theory of Criminal Law Politics (Penal Policy)***

Another relevant theoretical framework for analyzing the research question is the theory of criminal law politics, which focuses on policy-making and strategic decision-making within the realm of criminal law. According to Sudarto, legal politics refers to activities associated with the

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<sup>34</sup> See Nur Rohim Yunus, et al. "Corruption as an extra-ordinary crime: Elements and eradication efforts in Indonesia." *Journal of Creativity Student* 6, no. 2 (2021): 131-150; Rasdi Rasdi, et al. "When students fight corruption: A portrait of anti-corruption education for elementary school students." *The Indonesian Journal of International Clinical Legal Education* 3, no. 1 (2021): 111-124. See also Prince Bright Majiga, "Whistleblowers: The Role of Citizens in Fighting Corruption." *Corruption Proofing in Africa*. (London: Routledge, 2024), pp. 275-288; Sapna Chadah, "Containing corruption: Role of whistleblowers." *Indian Journal of Public Administration* 57, no. 3 (2011): 741-757.

<sup>35</sup> Mikkelsen, *Methods for development work and research: a new guide for practitioners*, Philmore Alleyne, Roszaini Haniffa, and Mohammad Hudaib. "The construction of a whistle-blowing protocol for audit organisations: a four-stage participatory approach." *International Journal of Auditing* 20, no. 1 (2016): 72-86.

processes of determining objectives and the methods to achieve them.<sup>36</sup> In the context of criminal law, it involves policy formulation to address key issues within the legal system.<sup>37</sup>

This theory is crucial in examining the formulation of legal policies designed to protect whistleblowers. It involves evaluating current laws, identifying gaps, and proposing policy-oriented solutions that align with broader criminal justice and anti-corruption objectives.<sup>38</sup> By exploring the intersection between legal frameworks and political decision-making, this theory provides a comprehensive lens for addressing the challenges faced by whistleblowers in Indonesia.<sup>39</sup>

#### ***D. Theory of Legal Certainty***

Legal certainty, a core objective of a legal state, is pivotal in analyzing research questions. Mochtar Kusumaatmadja emphasize the role of law in safeguarding human rights and ensuring compliance with legal frameworks to protect societal interests.<sup>40</sup> Legal certainty provides a peaceful and orderly means for enforcing laws.

Furthermore, Sudikno Mertokusumo defines legal certainty as the assurance that laws are enforced, allowing rightful parties to exercise their rights and obtain decisions.<sup>41</sup> Legal certainty is linked to formal legal syllogisms, which prioritize objective and deductive reasoning. The principles of positive law presume correctness and function as societal

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<sup>36</sup> Sudarto. *Hukum dan Hukum Pidana*. (Bandung: Alumni, 1977).

<sup>37</sup> Wayne N. Welsh, and Philip W. Harris. *Criminal Justice Policy and Planning: Planned Change*. (London: Routledge, 2014).

<sup>38</sup> See Suramin Suramin. "Indonesian anti-corruption law enforcement: current problems and challenges." *Journal of Law and Legal Reform* 2, no. 2 (2021): 225-242; Sidik Sunaryo, and Asrul Ibrahim Nur. "Legal Policy of Anti-Corruption Supervisor Design: A New Anti-Corruption Model in Indonesia." *Agenda* 29 (2020): 101660; Sofie Arjon Schütte, "The fight against corruption in Indonesia." *Südostasien Aktuell: Journal of Current Southeast Asian Affairs* 26.4 (2007): 57-66.

<sup>39</sup> Thomas Olesen, "The politics of whistleblowing in digitalized societies." *Politics & Society* 47, no. 2 (2019): 277-297.

<sup>40</sup> Mochtar Kusumaatmadja, *Fungsi dan Perkembangan Hukum Dalam Pembangunan Nasional*. (Bandung: Lembaga Penelitian Hukum dan Kriminologi, Fakultas Hukum, Universitas Padjadjaran, 1970).

<sup>41</sup> Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*. (Yogyakarta: Liberty, 2007).

stabilizers, addressing conflicts through normative rather than sociological responses.<sup>42</sup>

Legal certainty is realized through the universality of legal norms, establishing a structured legal order and preventing conflicts within the legal system.<sup>43</sup> This universality ensures the creation of coherent legal systems that fulfill both moral and functional purposes, safeguarding individuals against arbitrary actions.

### ***E. Theory of Legal Protection***

Legal protection encompasses both written and unwritten laws designed to regulate human behavior, grounded in principles of justice and efficiency for social order and peace.<sup>44</sup> Legal protection extends beyond national borders to encompass international communities, emphasizing the law's dual role in upholding moral values and regulating human conduct.<sup>45</sup> Satjipto Rahardjo traces the roots of legal protection theory to natural law philosophy, suggesting that law and morality are interconnected, reflecting human life both internally and externally.<sup>46</sup> This perspective indicates that legal protection arises not only from codified laws but also from broader societal norms.

The theory of legal protection distinguishes between preventive and repressive measures:

1. Preventive Legal Protection: Aims to prevent disputes, ensuring careful governmental decision-making, especially when exercising discretion. In the context of whistleblowers, this involves safeguarding their personal and familial security against potential threats.

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<sup>42</sup> Meuwissen Sidharta Arief, *Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum*. (Jakarta: PT Refika Aditama, 2013).

<sup>43</sup> Dominikus Rato, and Soerodjo, Irawan. *Filsafat Hukum: Suatu Pengantar Mencari, Menemukan, dan Memahami Hukum*. (Jakarta: LaksBang Justitia, 2014).

<sup>44</sup> Rima Azubalytė, and Oleg Fedosiuk. "Legal Principles vs. Statutory Ambiguity in Criminal Justice: Lithuanian Court Experience." *Criminal Law Forum* 32, no. 3 (2021): 435-457.

<sup>45</sup> Oona A. Hathaway, "Between power and principle: An integrated theory of international law." *The University of Chicago Law Review* 72, no. 2 (2005): 469-536.

<sup>46</sup> Satjipto Raharjo, *Perlindungan Hukum Bagi Rakyat Indonesia*. (Jakarta: Citra Aditya Bakti, 2020).

2. Repressive Legal Protection: Focuses on resolving disputes through judicial or administrative mechanisms. For whistleblowers, this involves governmental actions against those who harm them, ensuring accountability and justice.<sup>47</sup>

This dual role of legal protection highlights the importance of a comprehensive legal framework that not only resolves disputes but also actively prevents harm, providing a secure environment for whistleblowers to exercise their rights.<sup>48</sup>

Furthermore, this integrative theoretical framework offers a structured approach to analyzing the research questions and addressing the multifaceted challenges of legal protection for whistleblowers. Each theory contributes uniquely to the understanding and resolution of these issues, ensuring a comprehensive and robust analysis of the legal protections afforded to civil servant whistleblowers in the fight against corruption.

This study employs a normative legal research method, focusing on the analysis of literature, including primary and secondary legal materials. This approach involves examining legal principles, legal systematicity, legal synchronization (both vertical and horizontal), as well as comparative and historical legal studies.<sup>49</sup> The primary objective is to address legal issues related to the implementation of legal protection, particularly for ASN acting as whistleblowers in combating corruption. The research utilizes positive legal norms, such as Law No. 31 of 2014 on the Protection of Witnesses and Victims, to identify legal gaps that hinder ASNs' willingness to report corruption.

The data collection process involved identifying and cataloging both primary and secondary legal materials. These materials were sourced through comprehensive library research, encompassing legislation, judicial decisions, academic research findings, and official documents. To facilitate analysis, the legal materials were systematically categorized and classified. The process was further enriched by empirical

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<sup>47</sup> Tanya Gibbs, "Whistleblowing: protection or discouragement." *Journal of Money Laundering Control* 23, no. 3 (2020): 591-600.

<sup>48</sup> Lydia Mechtenberg, Gerd Muehlheusser, and Andreas Roeder. "Whistleblower protection: Theory and experimental evidence." *European Economic Review* 126 (2020): 103447.

<sup>49</sup> Marzuki Marzuki. "Study of analysis of child victims of crime protection in a victimological perspective." *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 1 (2023): 872-889.

data obtained through interviews and questionnaires conducted with relevant government officials in South Sumatra Province, providing a contextual foundation for the normative data under review. Specifically, the interviews were conducted with key informants, including experts and stakeholders such as Mr. Edy Gunawan, Mr. Alif, and Mr. Agustinus Sulisty, to gather valuable insights.

The data collected falls into two main categories: primary legal materials and secondary legal materials. Primary legal materials include relevant legislation, such as Law No. 31 of 2014 on the Protection of Witnesses and Victims, and other pertinent regulations, including court decisions with final and binding legal force. Secondary legal materials consist of books, journals, theses, dissertations, and other supporting documents that provide supplementary explanations of primary legal materials. These materials were used to construct legal arguments addressing issues related to the protection of ASN whistleblowers.

The data analysis utilized a descriptive-deductive approach to interpret and ascertain the meaning of the legal materials collected.<sup>50</sup> The study employed multiple approaches, including the legislative approach, case approach, comparative approach, conceptual approach, and futuristic approach. Each approach contributed to examining the implementation of legal protection for ASNs, ranging from the analysis of legal norms to proposals for future improvements. The results of the analysis were systematically organized to provide a comprehensive answer to the legal issues posed, taking into account both supporting and hindering factors identified in the field. Conclusions were drawn based on the findings and subsequently used to recommend more effective policy frameworks.

## **Whistleblowers: Problems, Challenges, and Current Development in Indonesia**

Whistleblowers play a crucial role in uncovering corruption within the civil service sector in Indonesia.<sup>51</sup> They act as primary informants, often providing key evidence necessary to expose corrupt practices within bureaucratic systems. As individuals embedded in these systems,

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<sup>50</sup> Soerjono Soekanto, and Sri Mamudji. *Penelitian Hukum Normatif*. (Jakarta: PT. Raja Grafindo Persada, 2004).

<sup>51</sup> Abdul Wahid, "The Urgence of Whistleblower Legal Protection in the Criminal Justice System." *Fiat Justisia: Jurnal Ilmu Hukum* 16, no. 4 (2022): 359-376.

whistleblowers have direct access to relevant documents, recordings, or other forms of evidence that can reveal acts of corruption. Their actions are instrumental in dismantling systemic corruption networks that often involve multiple actors. By coming forward, whistleblowers create a deterrent effect, discouraging potential offenders from engaging in corrupt activities due to the heightened risk of exposure. Furthermore, whistleblowers contribute to reforming governance structures by fostering greater transparency and accountability within the public sector.

However, whistleblowers face significant challenges, including threats to their physical safety, psychological well-being, and professional standing from those implicated in corrupt practices. In the civil service, the cultural norm of "*ewuh pakewuh*"—a reluctance to challenge authority—further hinders efforts to report corruption. Additionally, whistleblowers are often stigmatized as "*traitors*," leading to social isolation within their professional and community circles. While certain legal frameworks, such as Law No. 31 of 1999 on the Eradication of Corruption and Government Regulation No. 71 of 2000, provide whistleblower protections, their implementation is frequently inadequate. As a result, whistleblowers may lack sufficient guarantees for safety and anonymity, perpetuating fear and discouraging reports.

To strengthen the role of whistleblowers in Indonesia, strategic measures are essential. The government must enhance legal protections, develop secure and anonymous reporting systems, and provide recognition or incentives for individuals who come forward. Educational and training programs targeting civil servants are also critical to fostering an understanding of the importance of whistleblowers in promoting clean and ethical governance. By implementing these measures, whistleblowers can become effective agents of change, driving corruption eradication efforts and advancing bureaucratic reform in Indonesia.

### **Existing Legal Protection for ASN as Whistleblowers in Corruption Cases**

Many people today misunderstand the concept of a whistleblower. A whistleblower is someone who is aware of and involved in a criminal act and who notifies or reports the criminal act to law enforcement

authorities.<sup>52</sup> According to Aristotle's theory of justice, the state's legal protection of ASN, blowers must be fair.<sup>53</sup>

To achieve bureaucratic reform, effective management of ASN is essential. As civil servants, they must continuously enhance their capabilities and take responsibility for their work.<sup>54</sup> Under existing laws, anyone, including individuals, community organizations, or non-governmental organizations, can report criminal acts of corruption to law enforcement agencies or commissions handling corruption cases. These laws provide legal protection and a sense of security to whistleblowers. One way to protect whistleblowers is to prevent defamation reports made by corruption suspects against whistleblowers before the legal process regarding the corruption case is complete.<sup>55</sup>

Administrative legal apparatuses regulate how law enforcement, including the police, prosecutors, courts, and correctional institutions, should act against witnesses. Codes of ethics play a crucial role in maintaining professional standards and balancing good and bad actions within the context of professionalism.<sup>56</sup> If optimized, codes of ethics can serve as moral controls to sanction actions that violate ethical standards.<sup>57</sup>

The human right to be involved as a reporting witness in criminal justice proceedings is not explicitly regulated in the Code of Criminal

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<sup>52</sup> Anona Armstrong, and Ronald D. Francis. "Protecting the whistleblower." In *Research Handbook on International Financial Crime*. (London: Edward Elgar Publishing, 2015), pp. 583-601.

<sup>53</sup> Hyronimus Rheti, *Filsafat Hukum Edisi Lengkap (Dari Klasik ke Postmodernisme)*. (Yogyakarta: Universitas Atma Jaya Press, 2015).

<sup>54</sup> Hasmin Tamsah, Ansar, Gunawan, Yusriadi Yusriadi, and Umi Farida. "Training, knowledge sharing, and quality of work-life on civil servants performance in Indonesia." *Journal of Ethnic and Cultural Studies* 7, no. 3 (2020): 163-176.

<sup>55</sup> Leah Ambler, and Claire Leger. "Whistleblower protection: The next frontier in the transnationalization of anti-corruption law." In *The Transnationalization of Anti-Corruption Law*. (London: Routledge, 2021), pp. 307-332; Irwan Effendi, "Legal Protection for Whistleblowers of Corruption Crime Bring to Fairness." *Sociological Jurisprudence Journal* 7, no. 1 (2024): 31-39.

<sup>56</sup> Achmad Asfi Burhanudin, "Peran etika profesi hukum sebagai upaya penegakan hukum yang baik." *El-Faqih: Jurnal Pemikiran dan Hukum Islam* 4, no. 2 (2018): 50-67.

<sup>57</sup> Okky Wahyu Saputro, Teguh Prasetyo, and Putri Priyana. "Penegakan Kode Etik Terhadap Jaksa Yang Melakukan Korupsi." *Jurnal Kertha Semaya* 9, no. 3 (2021): 493-503



Procedure. However, there are some safeguards for witnesses, such as freedom from pressure when providing reports and the inclusion of their information in minutes (Article 110 and Article 118 of the Criminal Procedure Code, Law Number 8 of 1981).

According to Article 3 and Article 5 of Law Number 31 of 2014, victims and witnesses have the right to receive comprehensive legal protection. This includes security for themselves and their families, freedom from threats related to their testimony, participation in selecting forms of protection, providing information without pressure, access to translators, and various other supports (General Explanation of Law Number 31 of 2014).<sup>58</sup>

Although several laws accept whistleblowers, the Supreme Court Circular No. 04 of 2011 on the treatment of whistleblower crime whistleblowers and justice collaborators remains significant. This circular serves as a guide for subordinate courts in protecting whistleblowers, although it is not binding law.<sup>59</sup> Legal products must align with state philosophy, rooted in the 1945 Constitution of the Republic of Indonesia, and function to achieve justice and public order. They should reflect juridical, sociological, philosophical, and historical aspects to ensure continuity in national life.<sup>60</sup> A new paradigm for preventing and combating crime, including money laundering, emphasizes following illicit

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<sup>58</sup> According to Article 3 and Article 5 of Law Number 31 of 2014, victims and witnesses are entitled to comprehensive legal protection in the context of criminal justice proceedings. This legal protection encompasses several critical aspects. First, victims and witnesses have the right to security, ensuring their safety and that of their families, particularly in relation to any threats arising from their involvement in a case. They are also protected from any form of intimidation or coercion related to their testimony. Additionally, victims and witnesses can participate in selecting the appropriate form of protection tailored to their needs. This includes the ability to provide information voluntarily, without external pressure. The law further guarantees access to necessary support, such as translation services for non-native speakers, ensuring clear communication. These protections aim to uphold the integrity of the legal process while safeguarding the rights and well-being of victims and witnesses.

<sup>59</sup> Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan*. (Bandung: Alumni, 2002).

<sup>60</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. (Jakarta: Citra Aditya Bakti, 2001).

money trails to uncover and track criminal activities.<sup>61</sup> Whistleblowers must overcome fear and be willing to take risks to report crimes, as they often face intimidation and terror.<sup>62</sup>

The state must protect whistleblowers by providing legal and special protections from threats, intimidation, or fear during legal proceedings.<sup>63</sup> Whistleblowers often face powerful individuals or groups, which can lead to their legal status changing from whistleblower to something more problematic. The inability of ASN to act as whistleblowers in reporting corruption in Indonesia, especially in South Sumatra, is often due to obstacles in legal implementation. Law enforcement may not adequately protect or support witnesses, leading to a lack of legal guarantees for their safety.<sup>64</sup>

Complainants or reporting witnesses should receive both material and non-material legal protection. The law should recognize the rights of these individuals in criminal matters, especially in corruption cases.<sup>65</sup> The Supreme Court of the Republic of Indonesia issued Supreme Court Circular No. 4 of 2011 to address the treatment of whistleblowers and justice collaborators. The World Union Anti-Corruption Agreement

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<sup>61</sup> See Sahuri Lasmadi, et al. "Asset Seizure of Money Laundering Crimes Arising from Corruption in the Perspective of Legal Certainty and Justice." *Pandecta Research Law Journal* 18, no. 2 (2023): 352-374; Muhtar Hadi Wibowo, "Corporate Responsibility in Money Laundering Crime (Perspective Criminal Law Policy in Crime of Corruption in Indonesia)." *Journal of Indonesian Legal Studies* 3, no. 2 (2018): 213-236; Muttaqim Apriliani, "Analysis of The Probability of Money Laundering Crimes toward the Development of Cryptocurrency Regulations in Indonesia." *Indonesian Journal of Criminal Law Studies* 4, no. 1 (2019): 29-40; Diadra Preludio Ramada, "Prevention of Money Laundering: Various Models, Problems and Challenges." *Journal of Law and Legal Reform* 3.1 (2022): 67-84.

<sup>62</sup> Mike Levi, and Melvin Soudijn. "Understanding the laundering of organized crime money." *Crime and Justice* 49, no. 1 (2020): 579-631; Yuriy Yu Nizovtsev, Oleg A. Parfyo, Olha O. Barabash, Sergij G. Kyrenko, and Nataliia V. Smetanina. "Mechanisms of money laundering obtained from cybercrime: the legal aspect." *Journal of Money Laundering Control* 25, no. 2 (2022): 297-305.

<sup>63</sup> N. Ghufro, *Whistleblower dalam Sistem Peradilan Pidana Indonesia*. (Lhokseumawe: Pustaka Radja, 2014).

<sup>64</sup> Bambang Waluyo, *Viktimologi Perlindungan Korban & Saksi*. (Jakarta: Sinar Grafika, 2014).

<sup>65</sup> Levi, and Soudijn. "Understanding the laundering of organized crime money."

(UNCAC) also mandates that states provide legal protection to whistleblowers.<sup>66</sup>

Whistleblowers must feel secure and comfortable during the reporting process, free from coercion. Physical and psychological protection for whistleblowers and their families is crucial (Article 5 Paragraph 1 of Law Number 31 of 2014 concerning Protection of Witnesses and Victims). Moh Mahfud MD highlights the importance of legal development, which includes creating and updating legal materials, affirming institutional functions, and fostering law enforcement.<sup>67</sup> The renewal of criminal law involves both revising the penal code and creating new provisions that align with societal values.<sup>68</sup> Criminal law reform should reflect the socio-political and socio-cultural values of Indonesia.<sup>69</sup> Abdullah argues for updating criminal law by prioritizing participation, transparency, and accountability.<sup>70</sup> Legal reforms should be clear, straightforward, and beneficial to society, not just specific authorities or groups.

Currently, there is no law yet in Indonesia that explicitly regulates the reporting system for whistleblowers and justice collaborators. Such regulation is essential to assure whistleblowers that their reports will be investigated and that they will be protected. Policy makers and law enforcers often focus more on criminal perpetrators than on witnesses and whistleblowers. Law No. 31 of 2014 on the Protection of Witnesses and Victims underscores the importance of witness statements as evidence in criminal investigations. However, the absence of protective laws for witnesses poses challenges for law enforcement.

In Indonesia, the provision of legal protection for whistleblowers, particularly ASN, is essential to encourage greater participation in

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<sup>66</sup> Ratna Juwita, "Understanding the Typology of Health Sector Corruption in Indonesia." *Indonesian Law Review* 13, no. 1 (2023): 89-122.

<sup>67</sup> Moh. Mahfud, *Politik Hukum di Indonesia*. (Jakarta: LP3S, 2017).

<sup>68</sup> Rusli Muhammad, "Pengaturan dan Urgensi Whistle Blower dan Justice Collaborator dalam Sistem Peradilan Pidana." *Jurnal Hukum Ius Quia Iustum* 22, no. 2 (2015): 203-222.

<sup>69</sup> Vivi Ariyanti, "Pembaharuan Hukum Pidana di Indonesia yang Berkeadilan Gender dalam Ranah Kebijakan Formulasi, Aplikasi, dan Eksekusi." *Halu Oleo Law Review* 3, no. 2 (2019): 178-195.

<sup>70</sup> M. Zen. Abdullah, "Urgensi Perlunya Pembaharuan Hukum Acara Pidana Nasional di Indonesia yang Lebih Responsif." *Jurnal Ilmiah Universitas Batanghari Jambi* 20, no. 1 (2020): 281-287.

exposing misconduct.<sup>71</sup> To support this initiative, comprehensive legal safeguards and incentives—such as awards or first-tier benefits—should be made available to ASN whistleblowers and inspectorate officials who successfully uncover instances of corruption. Similarly, other countries, including the United States<sup>72</sup>, Australia<sup>73</sup>, Malaysia<sup>74</sup>, and Singapore<sup>75</sup>, have implemented reward systems for whistleblowers. This approach is often favored over increasing reliance on police officers and investigators, particularly when the likelihood of false reports is minimal.<sup>76</sup> Corruption involves actions that provide benefits contrary to the duties and rights of others. Such actions, when performed by officials or trustees, misuse power for personal or others' gain, violating legal and ethical standards.<sup>77</sup>

## The Role of Whistleblowers in Addressing Corruption

An analysis of existing literature and regulatory frameworks reveals a significant gap in legal protections for ASN who serve as whistleblowers in corruption cases in Indonesia.<sup>78</sup> The current legal provisions fail to offer sufficient security and assurance for ASN, deterring them from disclosing corrupt practices.<sup>79</sup> Although general whistleblower

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<sup>71</sup> Supriyadi Widodo Eddyono, *Masa Depan Perlindungan Whistleblower dan Peran LPSK*. (Jakarta: Koalisi Perlindungan Saksi, 2008).

<sup>72</sup> Theo Nyneröd, and Giancarlo Spagnolo. "Myths and numbers on whistleblower rewards." *Regulation & Governance* 15, no. 1 (2021): 82-97.

<sup>73</sup> John McLaren, Wesley Kendall, and Laura Rook. "Would the Singaporean approach to whistleblower protection laws work in Australia?." *Australasian Accounting, Business and Finance Journal* 13, no. 1 (2019): 90-108.

<sup>74</sup> Shanthi Rachagan, and Kalaithasan Kuppusamy. "Encouraging whistle blowing to improve corporate governance? A Malaysian initiative." *Journal of Business Ethics* 115 (2013): 367-382.

<sup>75</sup> El'fred Boo, Terence Bu-Peow Ng, and Premila Gowri Shankar. "Effects of incentive scheme and working relationship on whistle-blowing in an audit setting." *Auditing: A Journal of Practice & Theory* 35, no. 4 (2016): 23-38.

<sup>76</sup> Yehonatan Givati, "A theory of whistleblower rewards." *The Journal of Legal Studies* 45, no. 1 (2016): 43-72.

<sup>77</sup> H. Juni Sjafrien Jahja, *Say no to korupsi*. (Jakarta: VisiMedia, 2012).

<sup>78</sup> Anisa Arismaya, and Intiyas Utami. "Facts, causes and corruption prevention: Evidence in Indonesian ministries." *Journal of Contemporary Accounting* 1, no. 2 (2019): 95-106.

<sup>79</sup> Haryono Umar, Siti Safaria, Welda Mudiari, and Rahima Br Purba. *Preventing Corruption and Detecting Corruption: HU-Model*. (Jakarta: Merdeka Kreasi Group, 2023).

protections are outlined in Law No. 31 of 2014, which amends Law No. 13 of 2006 on the Protection of Witnesses and Victims, as well as in Supreme Court Circular No. 4 of 2011 regarding the treatment of whistleblowers and justice collaborators in certain crimes, these measures do not specifically cater to the unique vulnerabilities faced by ASN whistleblowers in corruption-related offenses.

This inadequacy stems from the absence of a comprehensive and specialized legal framework tailored to the challenges encountered by ASN who expose corruption. Unlike generic whistleblower protection policies, which primarily aim to safeguard individuals from retaliation, ASN whistleblowers require context-specific support mechanisms that acknowledge their dual roles as public servants and anti-corruption agents. The lack of such targeted provisions leaves ASN exposed to various risks, including workplace retaliation, career stagnation, and legal uncertainties, which discourage them from taking proactive stances against corruption within government institutions.

To strengthen the role of ASN in combating corruption, it is imperative to develop and implement legal instruments that provide clear, enforceable protections for whistleblowers in the public sector. These instruments should ensure anonymity, safeguard against any form of retaliation, and offer incentives for cooperation in corruption investigations. Moreover, a collaborative effort between the government, judiciary, and civil society is essential to create an environment that empowers ASN whistleblowers, enabling them to contribute effectively to transparency and accountability without fear of reprisal.

### **Current Legal Framework for Whistleblower Protection**

Indonesia's legal framework acknowledges the significance of whistleblowers in addressing corruption but fails to provide specific and robust protections tailored for ASN. While Article 15(a) of Law No. 19 of 2019, which amends Law No. 30 of 2002 concerning the Corruption Eradication Commission, mandates the provision of protection for whistleblowers, its enforcement has been inconsistent and insufficient. The broader regulatory environment, though designed to protect whistleblowers, often overlooks the unique challenges ASN face, such as

internal retaliation, bureaucratic resistance, and risks to job security.<sup>80</sup> For example, whistleblowers in the public sector frequently encounter not only personal risks but also systemic barriers that deter reporting corruption, such as limited guarantees of anonymity and a lack of clear protocols to address retaliatory actions.

While Law No. 19 of 2019 and its predecessor, Law No. 30 of 2002, represent efforts to institutionalize whistleblower protections, these laws fall short in addressing the specific needs of ASN whistleblowers. The gap lies not only in legal provisions but also in the practical implementation of these safeguards. For instance, the absence of comprehensive mechanisms to enforce protection leaves whistleblowers vulnerable.<sup>81</sup> Historical cases highlight instances where ASN whistleblowers were subjected to workplace harassment or career stagnation despite reporting corruption. Similarly, the Supreme Court Circular No. 04 of 2011, while offering guidelines for courts on treating whistleblowers and justice collaborators, lacks binding authority. This limits its impact, as courts are not obligated to adhere to its principles, leading to inconsistent application across cases.<sup>82</sup> Examples from court rulings reveal a lack of uniformity in how whistleblower protections are applied, further undermining confidence in the system.

The absence of detailed provisions specifically designed for ASN whistleblowers highlights a critical gap in Indonesia's anti-corruption efforts. Existing laws do not adequately address issues such as protection from retaliation, secure reporting channels, or legal support for whistleblowers acting in good faith.<sup>83</sup> Moreover, the non-binding nature of the Supreme Court Circular exacerbates these challenges by failing to compel subordinate courts to consistently uphold whistleblower

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<sup>80</sup> Kim Moloney, James S. Bowman, and Jonathan P. West. "Challenges confronting whistleblowing and the international civil servant." *Review of Public Personnel Administration* 39, no. 4 (2019): 611-634.

<sup>81</sup> Björn Fasterling, "Whistleblower protection: A comparative law perspective." In *International Handbook on Whistleblowing Research*. (London: Edward Elgar Publishing, 2014), pp. 331-349.

<sup>82</sup> Frank H. Easterbrook, "Ways of criticizing the court." *Harvard Law Review* 95, no. 4 (1982): 802-832.

<sup>83</sup> Wim Vandekerckhove, and David Lewis. "The content of whistleblowing procedures: A critical review of recent official guidelines." *Journal of Business Ethics* 108 (2012): 253-264.

protections. To bridge these gaps, a comprehensive legal reform is needed. This could include amendments to Law No. 19 of 2019 to explicitly address the unique vulnerabilities of ASN whistleblowers and the development of binding regulations or new legislation that ensures clear, enforceable protections. Specific measures, such as guaranteed anonymity, job security, and legal assistance, should be prioritized to create a secure and supportive environment. Additionally, collaborative efforts involving policymakers, the judiciary, and civil society are essential to ensure consistent application and enforcement of these protections, fostering a culture of accountability and transparency in the public sector.<sup>84</sup>

### **The Critical Role of Whistleblower Testimonies in Fighting Corruption**

Whistleblower testimonies play an essential role in uncovering and addressing corruption, as they often provide unique, firsthand insights into illicit activities.<sup>85</sup> These accounts can serve as pivotal evidence in investigations, enabling authorities to expose and dismantle corruption networks that might otherwise remain hidden. Numerous high-profile corruption cases worldwide have been successfully prosecuted due to whistleblowers coming forward, such as the Panama Papers leak, which exposed global financial corruption.<sup>86</sup> Despite their significance, whistleblowers frequently face systemic barriers to speaking out, including fear of retaliation and legal repercussions. In Indonesia, where institutional safeguards for whistleblowers are still evolving, these challenges are particularly pronounced, highlighting the critical need for robust protections and institutional reforms to support and encourage whistleblower participation.

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<sup>84</sup> Lloyd David Brown, *Creating Credibility: Legitimacy and Accountability for Transnational Civil Society*. (Connecticut: Kumarian Press, 2008).

<sup>85</sup> S. Kohn, "Whistleblower Laws and the Fight Against Corruption from Within." *The Practical Lawyer*, August (2023): 47-53.

<sup>86</sup> Akashdeep Singh, *Evaluating Responses to Offshore Tax Evasion: A Comparative Analysis of Legislative Reforms in the USA and Canada Post-Panama Papers*. (Ontario: Pilon School of Business, 2024).

Fear of retaliation, both personal and professional, significantly inhibits whistleblowers from reporting corrupt practices.<sup>87</sup> This retaliation can range from workplace harassment, demotion, or termination to more severe forms such as reputational damage or even threats to physical safety. Existing legal frameworks, such as Law No. 31 of 2014, which provides general protections for witnesses and victims, fall short in addressing these specific risks, particularly for ASN. Interviews conducted with whistleblowers like Mr. Edy Kurniawan and Mr. Alif underscore these concerns, revealing that ASN often perceive non-governmental organizations (NGOs) as safer reporting channels compared to government inspectorates. This preference stems from NGOs' perceived ability to maintain confidentiality, offer legal support, and avoid bureaucratic oversight, which whistleblowers fear could expose them to detection by their superiors. For example, in South Sumatra, whistleblowers have expressed mistrust toward inspectorates due to a lack of anonymity and concerns about internal retaliation, reflecting broader systemic issues within public institutions.

The challenges faced by whistleblowers, particularly ASN, point to broader deficiencies in Indonesia's institutional and legal frameworks. The preference for NGOs over government channels reflects a critical trust gap, suggesting the need for reforms to make official reporting mechanisms more secure and reliable. This includes creating anonymous reporting systems within inspectorates, implementing comprehensive anti-retaliation policies, and ensuring independent oversight of whistleblower protection mechanisms. Furthermore, the South Sumatra case highlights the real-world consequences of inadequate safeguards, underscoring the need for reforms tailored to address the unique risks faced by ASN whistleblowers. In addition to legal improvements, fostering a cultural shift within government agencies to promote transparency and protect whistleblowers is essential.<sup>88</sup> Collaborating with

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<sup>87</sup> Olivia Elizabeth Vere Taylor, Richard Philpot, Oliver Fitton, Zoë Walkington, and Mark Levine. "Police whistleblowing: A systematic review of the likelihood (and the barriers and facilitators) of the willingness of police officers to report the misconduct of fellow officers." *Journal of Criminal Justice* 91 (2024): 102170.

<sup>88</sup> See Ilham Nurhidayat, and Bevaola Kusumasari. "Strengthening the effectiveness of whistleblowing system: A study for the implementation of anti-corruption policy in Indonesia." *Journal of Financial Crime* 25, no. 1 (2018): 140-154; Irwan



NGOs and civil society can bridge institutional gaps, providing whistleblowers with the necessary confidence and resources to report corruption without fear.<sup>89</sup> Ultimately, addressing these systemic issues will empower whistleblowers to play a more active and effective role in combating corruption, thereby strengthening governance and accountability.

### Challenges in Legal Protection for ASN Whistleblowers

The absence of a specialized legal framework tailored to the needs of ASN whistleblowers in Indonesia is a critical shortcoming in the country's anti-corruption efforts.<sup>90</sup> While laws such as Law No. 31 of 2014 on Witness and Victim Protection and the Supreme Court Circular No. 04 of 2011 provide a foundation for whistleblower protections, they are overly generalized and fail to address the specific vulnerabilities of ASN. For instance, these laws lack detailed provisions to safeguard ASN from workplace retaliation, career jeopardy, and social ostracism—common consequences faced by individuals who expose corruption within bureaucratic environments. Moreover, the lack of enforceable anonymity measures during and after the reporting process leaves whistleblowers exposed to significant risks.<sup>91</sup> These gaps indicate a pressing need for more targeted legal protections that take into account the unique challenges faced by ASN whistleblowers.

The risks faced by ASN whistleblowers go beyond general fears of retaliation; they include demotion, transfer to undesirable positions, reputational damage, and in some cases, threats to personal safety.

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Effendi, "Legal Protection for Whistleblowers of Corruption Crime Bring to Fairness." *Sociological Jurisprudence Journal* 7, no. 1 (2024): 31-39.

<sup>89</sup> Budi Setiyono, "Making a New Democracy Work: The Role of Civil Society Organisations (CSOs) in Combating Corruption During Democratic Transition in Indonesia." *Dissertation*. Curtin University, 2010.

<sup>90</sup> Razif Arfan Efendi, and Arfianita Sukasih. "Assessing the Effectiveness of Indonesia's Criminal Justice System in Combatting Corruption: A Juridical Analysis." *Law and Economics* 18, no. 2 (2024): 110-121.

<sup>91</sup> See also Tanya M. Marcum JD, Jacob Young DBA, and Ethan T. Kirner. "Blowing the Whistle in the Digital Age: Are You Really Anonymous? The Perils and Pitfalls of Anonymity in Whistleblowing Law." *DePaul Business & Commercial Law Journal* 17, no. 1 (2019): 1-38; Anthony Minnaar, "The need for more anonymous whistleblowing in the fight against crime and corruption." *Acta Criminologica: African Journal of Criminology & Victimology* 32, no. 1 (2019): i-v.

Concrete examples, such as cases where whistleblowers have faced professional and social repercussions after reporting corruption, highlight the inadequacy of existing protections. The examination processes conducted by the State Civil Apparatus Commission (SCAC) further exacerbate these risks.<sup>92</sup> Procedural flaws, such as the absence of robust confidentiality protocols, can lead to the exposure of whistleblowers' identities and the details of their reports.<sup>93</sup> This lack of discretion not only undermines their safety but also discourages others from coming forward. Despite some efforts by SCAC to address these issues, such as emphasizing the importance of confidentiality, these initiatives remain insufficient without a legally binding framework and rigorous oversight to ensure their consistent implementation.

To enhance protections for ASN whistleblowers, Indonesia must prioritize comprehensive legal and institutional reforms. Amending existing laws, such as Law No. 31 of 2014, to include stringent confidentiality provisions, anti-retaliation measures, and secure reporting mechanisms would address many of the current gaps. Establishing a dedicated agency or unit specifically tasked with handling whistleblower complaints for ASN could further ensure anonymity and support throughout the reporting and legal processes. Additionally, international best practices, such as relocation programs, physical security measures, and access to psychological counseling, should be incorporated to provide holistic protection.<sup>94</sup> Beyond legal changes,

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<sup>92</sup> See Ekaterina Zinovyeva, et al. "Ways to combat corruption in the municipal service system." *XIV European-Asian Law Congress "The Value of Law" (EAC-LAW 2020)*. Atlantis Press, 2020; Muhammad Rinaldy Bima, "Diversion of Corruption Eradication Commission of The Republic of Indonesia Employees to State Civil Apparatus." *SASI* 29, no. 3 (2023): 417-426. See also Sofie Arjon Schütte, "Government policies and civil society initiatives against corruption." *Democratization in Post-Suharto Indonesia*. (London: Routledge, 2008), pp. 101-121.

<sup>93</sup> Nadia Smaili, and Paulina Arroyo. "Categorization of whistleblowers using the whistleblowing triangle." *Journal of Business Ethics* 157 (2019): 95-117.

<sup>94</sup> See Marga Gumelar, "The Connectivity of Whistleblowing Online System between Government Agencies in Indonesia: A New Round of Preventing and Eradicating Corruption." *Asia Pacific Fraud Journal* 4, no. 2 (2019): 121-128; Agus Joko Pramono, and Mohamad Iqbal Aruzzi. "The implementation of a whistleblowing system as an anti-corruption initiative in Indonesian government institutions." *Integritas: Jurnal Antikorupsi* 9, no. 2 (2023): 195-212.

addressing broader institutional issues—such as fostering a culture of accountability and trust within government agencies—is essential. By connecting these reforms to a wider effort to strengthen governance and transparency, Indonesia can empower ASN whistleblowers to play a more active role in combating corruption while ensuring their rights and safety are upheld.

To support these arguments, further studies, government reports, and NGO publications documenting the experiences and challenges of ASN whistleblowers should be referenced, providing empirical evidence to highlight the urgency of these reforms.

## **Recommendations for Strengthening Legal Protections for ASN Whistleblowers**

To address the challenges faced by ASN whistleblowers in Indonesia, it is imperative to develop a robust legal framework tailored to their specific needs. This framework should include comprehensive legal protection, secure reporting mechanisms, incentives for whistleblowers, and holistic support systems. By integrating these measures, Indonesia can foster a safer environment for whistleblowers, enabling them to play an active role in combating corruption without fear of retaliation or harm. Drawing on successful examples from other countries and best practices in whistleblower protection, these recommendations provide a blueprint for reform.

### ***A. Comprehensive Legal Protection***

The cornerstone of this framework must be the enactment of laws specifically designed to protect ASN whistleblowers. These laws should explicitly guarantee confidentiality, ensuring that whistleblowers' identities are safeguarded throughout the reporting and investigation process. Legal immunity from retaliatory actions, such as demotions, transfers, or dismissals, should be mandated to protect whistleblowers from professional and personal repercussions.<sup>95</sup> Additionally, the framework should provide clear legal recourse for whistleblowers whose

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<sup>95</sup> Stephen M. Kohn, *Concepts and Procedures in Whistleblower Law*. Bloomsbury Publishing USA, 2000.

rights are violated. Successful examples, such as the U.S.<sup>96</sup> Whistleblower Protection Act, demonstrate how these protections can be effectively implemented. Such a law could also establish mandatory safeguards during investigations, such as secure evidence handling and controlled access to whistleblower testimonies, to prevent unauthorized disclosures.

### ***B. Confidential Reporting Mechanisms***

To encourage whistleblowing, confidential and anonymous reporting channels must be established. These channels could be managed by an independent body, such as a dedicated whistleblower protection office, operating outside the conventional bureaucratic structure to ensure impartiality and trust. Secure technologies, including encrypted online platforms and toll-free hotlines, should be used to maintain anonymity and prevent data breaches. Furthermore, these reporting mechanisms should allow whistleblowers to track the progress of their cases while preserving confidentiality. Transparency in the follow-up process would build trust and ensure that reports are taken seriously. Learning from global practices, Indonesia could model its reporting systems on mechanisms used in the European Union, where independent bodies oversee whistleblower disclosures.<sup>97</sup>

### ***C. Incentives and Rewards***

Providing incentives is another critical strategy to motivate ASN employees to report corruption. These incentives could be monetary, such as awarding whistleblowers a percentage of assets recovered in corruption cases, or non-monetary, such as career advancement opportunities or scholarships for whistleblowers or their families. Public recognition could also serve as an incentive, though it should be offered

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<sup>96</sup> See Joyce Rothschild, "Freedom of speech denied, dignity assaulted: What the whistleblowers experience in the US." *Current Sociology* 56, no. 6 (2008): 884-903; Rajeev K. Goel, and Michael A. Nelson. "Whistleblower laws and exposed corruption in the United States." *Applied Economics* 46, no. 20 (2014): 2331-2341.

<sup>97</sup> Juho Saloranta, "The EU Whistleblowing Directive: An Opportunity for (Operationalizing) Corporate Human Rights Grievance Mechanisms?." *European Business Organization Law Review* 22, no. 4 (2021): 753-780; Alja Poler De Zwart, "EU whistleblowing rules to change in favor of whistleblowers." *Journal of Investment Compliance* 21, no. 1 (2020): 55-61.

only with the whistleblower's consent to avoid compromising their safety or anonymity.<sup>98</sup> Structuring these rewards in a way that ensures confidentiality and avoids unintended risks would help encourage ethical behaviour within the civil service while reinforcing accountability and integrity.

#### ***D. Physical and Psychological Protection***

Physical and psychological protection is essential to mitigate the risks faced by whistleblowers and their families.<sup>99</sup> Physical safety measures could include relocation programs for whistleblowers facing threats and, when necessary, police protection. These programs should extend to family members who may also be targeted. Psychological support is equally critical, encompassing confidential counselling services, stress management programs, and trauma-informed care to address the emotional toll of whistleblowing. Drawing from international best practices, such as the psychological support initiatives offered to whistleblowers in the United States,<sup>100</sup> Indonesia could develop a robust support system that prioritizes mental health and well-being.

#### ***E. Legal Assistance and Holistic Oversight***

Whistleblowers should have access to free or subsidized legal assistance to navigate the complexities of reporting corruption. Establishing a network of specialized pro-bono lawyers trained in whistleblower protection would ensure that whistleblowers receive expert guidance and representation. Additionally, whistleblowers should be granted immunity from prosecution for actions taken in good faith during the reporting process. To ensure these measures are implemented effectively, a centralized coordinating body, such as an independent Whistleblower Protection Commission, could oversee the framework. This body would monitor the effectiveness of protections, address

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<sup>98</sup> Tim Schwartz, *A Public Service: Whistleblowing, Disclosure and Anonymity*. (New York: OR Books, 2020).

<sup>99</sup> Tina Uys, and Ria Smit. "Resilience and whistleblowers: Coping with the consequences." *South African Review of Sociology* 47, no. 4 (2016): 60-79.

<sup>100</sup> Kate Kenny, Wim Vandekerckhove, and Marianna Fotaki. *The Whistleblowing Guide: Speak-Up Arrangements, Challenges and Best Practices*. (New Jersey: John Wiley & Sons, 2019).

complaints of retaliation, and publish regular reports to promote transparency and accountability.

Finally, the reconstruction of legal protections for ASN acting as whistleblowers in the fight against corruption underscores the critical necessity for a comprehensive and robust legal framework to ensure their safety and empowerment. Looking forward, a proposed promising framework as the results of this study should prioritize the safeguarding of whistleblowers' legal, professional, and economic stability, as well as that of their families. Furthermore, it should extend protective measures and incentives, including rewards, to auditors and investigators engaged in uncovering corrupt practices. These provisions are essential to cultivating a culture of transparency and accountability within public service institutions.

## Conclusion

Finally, this study underscores the critical need for comprehensive legal reforms to protect ASN whistleblowers in Indonesia, who play an important role in combating corruption. The existing legal framework inadequately addresses their vulnerabilities, leaving whistleblowers exposed to potential retaliation. To effectively empower whistleblowers, Indonesia must implement targeted legislation, establish secure reporting mechanisms, and offer necessary protections and incentives. Strengthening these safeguards will enable whistleblowers to report corruption without fear, enhancing the country's anti-corruption efforts. Such reforms are essential for cultivating a culture of transparency and accountability within public institutions. In the long term, safeguarding whistleblowers will not only improve anti-corruption initiatives but also foster ethical governance and reinforce the rule of law. Achieving these objectives requires a concerted effort from policymakers, civil society, and international organizations to create a legal environment that both protects whistleblowers and deters corruption.

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*The power of the government lies  
in secrecy, and whistleblowers  
threaten that power by shining a  
light on corruption and abuse.  
Their bravery and sacrifice are  
essential for a functioning  
democracy.*

Jane Smith  
*Activist & Whistleblower*

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