



Legal Protection against Whistleblowers in Business Competition Procedure Law in the Business Competition Supervisory Commission of the Republic of Indonesia

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Abstract

A whistleblower is an individual who voluntarily reveals alleged violations of law or ethics in an institution, including violations of the principles of fair business competition. In the context of enforcing competition law in Indonesia, the role of whistleblowers is very important to uncover anti-competitive practices, such as cartels, abuse of dominant position, and tender rigging. However, the legal position of whistleblowers in the competition procedural law at the Business Competition Supervisory Commission of the Republic of Indonesia does not yet have comprehensive regulations, especially regarding guarantees of legal protection against the risk of retaliation, intimidation, or discrimination. This study aims to analyze the form and effectiveness of legal protection available to whistleblowers in the procedural law system of the Business Competition Supervisory Commission of the Republic of Indonesia and to examine the urgency of establishing stronger and more explicit protection norms. Using normative legal methods and a comparative legal approach, this study finds that despite normative gaps, the Business Competition Supervisory Commission of the Republic of Indonesia has the potential to strengthen the role of whistleblowers through internal policies and reformulation of procedural law. The main recommendation of this study is the need for regulatory harmonization between competition law and whistleblower protection regulations, including possible amendments to the KPPU Regulation to align with the principles of procedural fairness and human rights protection.

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1. Introduction

Healthy business competition is the main foundation for creating a fair and efficient economy. With healthy competition, every business actor has an equal opportunity to develop without any monopolistic obstacles or detrimental business practices. In Indonesia, this principle has become a serious concern for the government, which was then stated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unhealthy Business Competition.

Since the enactment of this law, there have been significant changes in business patterns in Indonesia. Many companies that previously had monopolistic practices have begun to adjust their business strategies to be more competitive and not violate competition rules. In addition, the presence of the Republic of Indonesia Business Competition Supervisory Commission as an institution responsible for supervising business competition has further strengthened the implementation of this regulation.

Fair and effective enforcement of competition law is one of the important pillars in creating a healthy business climate in Indonesia. However, law enforcement in the field of competition often faces major challenges, especially in terms of disclosing and proving violations, such as cartel practices, monopolies, or tender rigging which are generally carried out in secret.

Most violations of competition law are covert and difficult to detect without direct information from parties who have access to these practices. In this context, the presence of whistleblowers or informants becomes very important.

A whistleblower is an individual who dares to reveal information related to violations that occur, either from within the company or other parties involved. Information provided by a whistleblower is often key in exposing complex and hidden anti-competitive practices.

In the Witness and Victim Protection Agency Law, Whistleblowers are referred to as reporters, namely those who share reports, data, or explanations to law enforcement regarding criminal acts that will, are, or have occurred. (Khairiyah 2020)^[4]

However, the strategic role of whistleblowers often faces various risks due to their actions, such as threats to personal safety, social stigma, intimidation, and retaliation in the form of termination of employment or lawsuits from the reported party. These risks result in many people not daring to report even though they have important information related to violations. This situation shows the need for adequate legal protection for whistleblowers to ensure that they feel safe and protected in revealing the truth.

Although Indonesia has Law No. 13 of 2006 on Protection of Witnesses and Victims which provides general protection to reporters, this regulation does not specifically regulate protection for whistleblowers in the context of competition law. In addition, the mechanism and implementation of protection under the Business Competition Supervisory Commission still need to be strengthened in order to provide more effective protection guarantees.

In the Indonesian context, strong legal protection for whistleblowers is essential to create a conducive environment for disclosing violations of competition law. Therefore, legal research is needed in an effort to strengthen the legal and institutional framework that is able to provide comprehensive protection for whistleblowers.

2. Research Methodology

This is a qualitative research employing normative legal-research variety. Normative legal-research is a procedure of scientific research in order to find the truth based on the logic of legal science, especially its normative side (Ibrahim 2010). Normative legal research is legal research that aims to analyze written legal norms and the legal system as a whole, including legal principles, legal concepts, and legal doctrines. (Marzuki 2005)^[7]

In order to achieve the purpose of the research, this research employs statute approach and conceptual approach.

The legal materials used in this research include primary legal-material in forms Indonesian laws and regulations related to this research. In addition to that, there are secondary legal-materials and tertiary legal-materials.

The three collected materials are processed and analyzed by way of juridically qualitative method in order to answer the problems of the research.

3. Discussion

3.1. The Role of Whistleblowers in Enforcing Competition Law

Healthy business competition is one of the important pillars in building a just national economy. For this reason, the state is present with a legal instrument for business competition to prevent monopolistic practices and unfair business

competition. Enforcement of business competition law in Indonesia is specifically regulated through Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

Competition law aims to create an open and fair market structure. In a market economy system, competition among business actors will result in production efficiency, innovation, competitive prices, and a variety of product choices for consumers. (Porter 1980)^[9] Without competition regulation, large companies tend to use their power to dominate the market, hinder small business actors, and ultimately harm consumers.

Enforcement of competition law in Indonesia is carried out by the Republic of Indonesia Business Competition Supervisory Commission, an independent state institution established based on Law Number 5 of 1999. The Republic of Indonesia Business Competition Supervisory Commission has the task of, among other things, assessing agreements, business activities, and dominant positions that are suspected of violating the principles of healthy business competition.

As business practices develop, Indonesia has revised its competition regulations. One of them is through Law Number 11 of 2020 concerning Job Creation (Omnibus Law) which also changes several provisions in the Antimonopoly Law. These changes include strengthening the position of the Business Competition Supervisory Commission in imposing direct administrative fines without having to go through the courts first.

One of the biggest challenges in enforcing competition law is the complexity of the cases handled. Competition cases not only involve violations of legal norms, but also require in-depth economic analysis, such as evaluating market structure, business actor behavior, and its impact on consumers. (Kovacic 2018)^[5]

Enforcement of competition law requires strong evidence to uncover anti-competitive practices such as cartels, abuse of dominant position, or bid rigging. Evidence plays a central role in uncovering and proving the occurrence of anti-competitive practices. Strong evidence allows regulators and law enforcers to build a solid case before the court or competition authority.

Because the nature of the violation is often confidential, collecting evidence becomes a major challenge. In this context, the existence of whistleblowers becomes very important. Whistleblowers, namely individuals from within an organization or company who report violations of the law to the competent authorities, play a strategic role in revealing violations that are difficult to detect by ordinary means. (Lewis 2001)^[6]

A whistleblower in the context of competition law is an internal party (e.g. an employee, former employee, or even a business partner) who provides important information to a competition authority regarding anti-competitive practices carried out by a business actor. (Smith 2014)^[11]

The role of whistleblowers is very important in supporting the enforcement of competition law. Many cases of violations cannot be revealed without information from within the company. For example, the disclosure of a cartel that is conducting price fixing often comes from reports from whistleblowers who have direct access to the company's internal communications.

Several major cases have been successfully exposed through whistleblowers, including the Air Cargo Cartel Case (European Union, 2010), a whistleblower report uncovered a

global cartel case in the cargo aviation sector that resulted in a fine of €799 million to major airlines such as Air France and KLM. (European Commission 2010) The Bid Rigging Case in Japan, information from a former construction company official uncovered bid rigging practices in infrastructure projects, resulting in fines and construction sector reforms. (OECD 2009).

The role of whistleblowers has a positive impact on the enforcement of competition law, including:

a. Preventing Monopolistic and Cartel Practices

Whistleblowers are often the primary source of uncovering monopolistic or cartel practices that violate competition law. For example, in the case of a price cartel, certain companies may collude to set high prices, harming consumers and preventing new competitors from entering the market. According to a report from the Organisation for Economic Co-operation and Development (OECD), whistleblower reporting has helped governments and regulatory bodies uncover cartel practices and return billions of dollars to the economy through fines and compensation to consumers.

b. Increasing Transparency and Accountability

The presence of whistleblowers can force companies to be more transparent in their operations. When a scandal is exposed, companies often try to improve their standards of compliance and business ethics in order to restore public trust. For example, after the violations of large companies such as Enron and Volkswagen, many other companies improved their internal reporting systems and compliance policies.

c. Protecting Consumers from Fraudulent Practices

When whistleblowers uncover fraudulent or harmful business practices, harmed consumers can receive greater protection. For example, in the case of unsafe or dangerous products, whistleblower reports can allow regulators to act quickly and remove the product from the market before it causes wider impact.

The main role of whistleblowers in supporting the enforcement of competition law, including:

1. Provide Initial Evidence.

Information from whistleblowers is often the first clue for competition authorities to initiate an investigation into alleged violations. (OECD 2009)

2. Assisting in Investigations.

In addition to initial information, whistleblowers can assist in strengthening evidence, explaining the mechanisms of violations, and showing supporting documentation.

3. Improving the Effectiveness of Law Enforcement.

With inside information, the investigation process becomes faster, more accurate, and law enforcement costs can be reduced.

The role of whistleblowers in enforcing competition law is very important. They are the main source of information for competition authorities, helping to uncover illegal practices, speed up investigations, and provide a deterrent effect for companies that violate the rules.

Despite facing great risks and challenges, the existence of legal protection and community support can provide more incentives for individuals to dare to reveal violations. In the future, there needs to be increased regulation to ensure that

whistleblowers are protected and that competition law enforcement is more effective in maintaining market fairness.

3.2. Strengthening Legal Protection for Whistleblowers in the Field of Business Competition

The position of whistleblowers as witnesses is very important in the enforcement of competition law, especially reporting witnesses. Reporting witnesses are very much needed considering the various difficulties faced by competition law enforcement institutions (Business Competition Supervisory Commission) to uncover a case faced if there is no brave whistleblower who reports alleged violations of monopolistic practices and unfair business competition.

Undergoing the role of a whistleblower is not an easy choice and can be done by everyone. Someone who has the courage to reveal an act of monopolistic practices and unfair business competition can be ascertained that he is a person who can control feelings of fear and has the courage to bear the risk of being a leaker or secret revealer. Then in practice, most witnesses and victims are very vulnerable to various terrors and intimidation from irresponsible individuals.

For example, a former employee reported an alleged monopoly in sector X. However, he felt afraid and did not receive adequate protection, so the report could not be followed up properly. Another example, an employee who reported an alleged unfair competition in sector Y received threats from the company. He then withdrew the report and did not pursue the case.

The state is obliged to provide protection guarantees to a whistleblower in order to enforce the law against violations of monopolistic practices and unfair business competition. Strengthening whistleblower protection in cases of monopolistic practices and unfair business competition is very important to encourage effective reporting and law enforcement. Reporters often feel afraid and do not receive adequate legal protection, thus hampering the process of disclosing violations. For this reason, steps are needed to strengthen protection, such as special handling, physical and psychological protection, and incentives for reporters.

The guarantee of protection for whistleblowers related to monopolistic practices and unfair business competition has been guaranteed by Law Number 5 of 1999 and Regulation of the Business Competition Supervisory Commission No. 1 of 2019, but there are still several weaknesses in whistleblower protection, as follows:

1. Does not guarantee physical, legal, or psychological protection for the reporter.
2. Does not protect the reporter from retaliation, such as termination of employment or lawsuits by the reported party.
3. Does not provide incentives or rewards for reporters who act in good faith.
4. There are no explicit regulations regarding the collaboration framework with the Witness and Victim Protection Agency.

The steps required in an effort to strengthen whistleblower protection in supporting the enforcement of competition law are as follows:

- There needs to be a clear law or regulation regarding whistleblower protection, including reporting mechanisms, handling processes, and sanctions for perpetrators who hinder reporting or make threats to the reporter.

- Whistleblowers need to receive special treatment, including physical and psychological protection, as well as disclosure of identity that is only carried out if necessary and with the consent of the reporter.
- Reporters who successfully uncover cases of unfair business competition can be given incentives or awards, both in financial and non-financial forms, to increase their motivation and trust.
- Education and socialization regarding whistleblower protection need to be carried out to the public and law enforcement officers, so that they understand the importance of protection and the reporting mechanisms available.
- There needs to be good coordination between the Business Competition Supervisory Commission and other law enforcement agencies, such as the police and prosecutors, to ensure that reported cases of unfair business competition can be handled effectively and efficiently.

Strengthening whistleblower protection in the field of competition law and strengthening the enforcement of competition law requires concrete steps with 4 (four) strengthening measures, as follows:

1. Strengthening substantive regulations can take the form of:

a. Preparation of a Special Law on Whistleblowers.

This special law needs to regulate clear definitions, rights and obligations of whistleblowers, as well as forms of protection that include legal, physical and psychological protection. Some countries have laws that specifically protect whistleblowers, such as the Whistleblower Protection Act in the United States or the Public Interest Disclosure Act in the United Kingdom.

A number of countries have implemented whistleblower protection regulations with various approaches, for example:

- **United States:** With the Whistleblower Protection Act, individuals who report corruption violations are given legal guarantees and protection from retaliation.
- **European Union:** In 2019, the European Union adopted regulations requiring protection for whistleblowers in the public and private sectors.
- **Indonesia:** Although there are several regulations regarding whistleblowers, there are still challenges in implementation and protection that is not yet optimal.

B. Revision of Law Number 5 of 1999

Added a special chapter on whistleblower protection, including a prohibition on retaliation from business actors to whistleblowers.

C. Improvement of the Regulation of the Business Competition Supervisory Commission No. 1 of 2019.

Contains detailed procedures on whistleblower protection, including data security standards and handling of high-risk complaints.

2. Strengthening in the institutional field.

Strengthening the institutional sector can be done in the following ways:

- Establishment of a Whistleblower Unit at the Business Competition Supervisory Commission.

- This special unit will handle the reception, investigation, and risk management of whistleblowers.
- Formal Coordination with the Witness and Victim Protection Agency.
- A standard protocol (SOP) is established between the Business Competition Supervisory Commission and the Witness and Victim Protection Agency regarding the transfer of physical and legal protection.
- Human Resources Training for the Business Competition Supervisory Commission.
- Officers must be trained professionally to handle whistleblowers with an empathetic approach and high confidentiality.

3. Strengthening technology and reporting systems

In strengthening technology and reporting systems at the Business Competition Supervisory Commission, the following is required:

- a. Integrated Whistleblower System (WBS), where the Business Competition Supervisory Commission needs to build an anonymous, secure, and encrypted online reporting system.
- b. Improved Cyber Security, reporter information must be stored with high security standards so that it does not leak to the public or the reported party.

4. Strengthening legal culture and education

The Business Competition Supervisory Commission needs to strengthen legal culture and education for the community by carrying out the following activities:

- **Pro-Whistleblower Public Campaign:** There needs to be a campaign that emphasizes that reporting violations is a heroic act, not a betrayal.
- **Education for Business Actors:** So that Business Actors do not take retaliatory action against the reporter and understand the legal sanctions that follow.

Protection for whistleblowers in the field of business competition is still partial and administrative. To encourage public participation in the supervision and enforcement of business competition law, a strong and comprehensive protection system is needed. Therefore, strong and comprehensive legal protection for whistleblowers is an absolute requirement to support the effectiveness of business competition law enforcement.

Whistleblowers play a critical role in competition law enforcement by exposing harmful business practices, so they must be protected with strong regulation, institutional support, public awareness, and technology.

3.3. The Ideal Form of Protection for Whistleblowers in Competition Law

Whistleblowers in competition cases have a strategic role as a source of initial information that allows the disclosure of anti-competitive practices such as cartels, price fixing, or market division. However, in practice, the potential of whistleblowers is not optimal due to the lack of comprehensive legal protection. Therefore, the development of ideal procedural law must create a proactive, comprehensive, and integrated protection system.

Whistleblowers have a strategic role in exposing legal violations in various sectors, including business competition. In the context of business competition, their role is

increasingly crucial because they can help relevant authorities uncover anti-competitive practices such as cartels, price fixing, or market division. However, in practice, the effectiveness of whistleblowers is still far from optimal due to the minimal legal protection provided to them. (Smith 2020)^[10]

Therefore, the development of ideal procedural law needs to consider a proactive, comprehensive, and integrated protection system so that whistleblowers feel safe in providing information without fear of threats or repressive actions. (Brown 2021)^[11]

The ideal form of protection for whistleblowers in competition law must fulfill the following principles:

- Absolute Confidentiality.
- Protection from Retaliation.
- Guarantee of Physical and Psychological Security.
- Access to Legal Aid.
- Fair Incentives.
- Independent and Safe Reporting Channels.
- Long-Term Legal Protection Mechanisms.
- Rehabilitation and Recovery Programs.
- Relocation Schemes or Physical Protection.
- Obligations of Companies and Governments in Protecting Whistleblowers
- Monitoring and Evaluation of Whistleblower Protection.

To ensure the effectiveness of disclosing competition violations, legal protection for whistleblowers must include various ideal aspects. First, their anonymity and confidentiality of identity must be guaranteed so that they do not become targets of retaliation. Second, the legal system must prohibit any form of retaliation against whistleblowers, whether in the form of intimidation, legal pressure, or termination of employment. Third, security guarantees and legal assistance must be provided to protect them from risks that may arise from the reports they make.

In addition, protection for whistleblowers can be strengthened by providing financial incentives or compensation for the negative impacts they experience. The state also needs to provide a safe complaint mechanism, such as a confidential reporting portal that guarantees protection of whistleblowers' personal information. The role of competition supervisory institutions, such as the Business Competition Supervisory Commission, must be strengthened to ensure that whistleblowers receive optimal protection. Support from the public and the media is also very important in increasing transparency and accountability in the economic system.

The ideal form of protection and strong legal mechanisms, whistleblowers can be significant agents of change in maintaining healthy and transparent business competition. This will have a positive impact on the market, consumers, and sustainable economic growth. Therefore, greater commitment from various parties is needed to realize an effective and efficient whistleblower protection system.

4. Conclusion

Whistleblowers play an important role in exposing unfair business competition practices such as monopolies, cartels, and abuse of dominant positions, because whistleblowers in the context of business competition law are internal parties such as employees, former employees, or business partners who reveal anti-competitive practices to the relevant

authorities. The information provided can assist in investigations into violations that are difficult to detect without the involvement of parties within the organization.

Strengthening whistleblower protection in monopolistic practices and unfair business competition cases is essential to encourage effective reporting and law enforcement. Strong and comprehensive legal protection for whistleblowers is an absolute requirement to support the effectiveness of competition law enforcement.

Comprehensive protection for whistleblowers is an important foundation in building a healthy and fair business competition system. With strong protection, whistleblowers no longer need to fear negative risks such as dismissal, intimidation, or lawsuits.

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