

The Justice Collaborator Legal Protection in Cases of Corruption Crimes

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Abstract: *The purpose of this research is to examine, know and analyze individual parameters that can be classified as justice collaborators in disclosing legal facts of corruption and the formulation of legal rules governing the protection of justice collaborator witnesses of corruption. The approach method used in this paper is normative juridical. The specification of this writing is descriptive analytical. There is a strong relevance between the presence of a Justice Collaborator and the disclosure of a criminal case. However, in spite of this it is always the individuals who suffer the most from a state of not being trusted or trusted, from a collapse of self-confidence, from harassment, from intimidation, from being publicly belittled or tortured. Security guarantees and protection in the form of protection for a person with the status of a Justice collaborator in corruption crimes are urgently needed. Justice collaborators are vulnerable to intimidation and threats, both physical and psychological, against themselves or their family members. Threats and intimidation of justice collaborators are carried out by a person or group of people who feel aggrieved by the information they have provided relating to the crimes they have committed. Security guarantees and protection in the form of protection for a person with the status of a Justice collaborator in corruption crimes are urgently needed.*

Keywords: Collaborator; Corruption; Justice.

1. Introduction

Justice as fairness begins with one of the most general choices that people can make together with the choice of the first principles of a conception of justice which govern further critique and reform of institutions.¹The form of justice as fairness is to look at the various parties in the initial situation as rational and equally neutral. This does not mean that the parties are selfish ie individuals with

¹Gustav Radbruch, Statutory Lawlessness and Supra-Statutory Law (1946), Oxford Journal of Legal Studies, Volume 26, No. 1, (2006), p. 6.

a certain type of interest in wealth, prestige and domination.²

Completion of a criminal case as stipulated in Article 183 of the Criminal Procedure Code which states that a judge may not impose a sentence on a person unless with at least two valid pieces of evidence³he obtains the conviction that a crime has actually occurred and that it is the defendant who is guilty of committing it, meaning that there is an option to choose at least two out of five of the five points contained in Article 184 of the Criminal Procedure Code such as witness testimony, expert testimony, letters, instructions, and statements of the accused.

In the current era, to make it easier and faster to reveal the facts of crimes that have occurred, the term Justice Collaborator is known. The term Justice Collaborator in Indonesian legal literature can be found in Supreme Court Circular Letter Number 4 of 2011 Concerning Treatment for Whistleblowers and Witness Collaborators in Certain Criminal Cases.

Act No. 13 of 2006 concerning the Protection of Witnesses and Victims does not provide a definition of a reporter, either his position as a Westleblower or Justice Collaborator, however, this lack of understanding does not eliminate the rights that must be given to them and must be fulfilled by the LPSK. This is because Justice Collaborators are both considered witnesses when reporting a corruption case. The concept of Justice Collaborator is essentially the same as the concept of inclusion offense in the provisions of Articles 55 and 56 of the Criminal Code, where a person's involvement in a corruption case and he himself reports the case to law enforcement officials occurs in several possibilities such as, as a person participating with other people corruption, people who commit corruption at the suggestion of people and people who help others commit corruption. A Justice Collaborator who reports corruption cases is a person who has courage and a strong mentality. This is because these people basically already know the bad things that have happened to them because of the report, such as being threatened, intimidated, persecuted, dishonorably dismissed from their positions or even killed.⁴

Efforts to eradicate corruption are caught up in a debate and are teetering behind the pace of growth in the tactics and strategies of corrupt actors who have always

²John Rawls, 2011, *Theory of Justice: Fundamentals of Political Philosophy to Realize Social Welfare in the State*, Yogyakarta: Student Library, p.14-15

³Septian Nanang Pangestu and Lathifah Hanim, *The Role of Prosecution Related to Prosecutor's Demand in Enforcing the Criminal Action of Narcotics*, *Jurnal Daulat Hukum* Volume 4 Issue 1, (2021), p.45

⁴Supriadi Widodo Eddyono. *Prospects for Protection of Justice Collaborators in Indonesia, Comparison with America and Europe*. *Comparative Journal*, Vol.1 No.1, (2011), p.85-86

seemed to be one step ahead of law enforcement.⁵After the rush of pressure and suggestions for the government to immediately revise Act No. 13 of 2006 concerning the Protection of Witnesses and Victims, the Supreme Court temporarily issued a Circular Letter of the Supreme Court Number 4 of 2011 so that the rights that should be obtained by justice collaborators can be realized in the future. In a Joint Decree between the Witness and Victim Protection Agency (LPSK), the Attorney General's Office, the Indonesian National Police, the KPK and the Supreme Court⁶it was stated that the justice collaborator is a witness, who is also a perpetrator, but wants to cooperate with law enforcement in order to dismantle a case and even return assets resulting from corruption crimes if the assets are in his possession.⁷

The purpose of the author's research is to study, know and analyze individual parameters that can be classified as justice collaborators in disclosing legal facts of corruption and the formulation of legal rules governing the protection of justice collaborator witnesses of corruption.

2. Research Methods

To conduct an assessment in this writing the author uses a normative juridical method, with an emphasis on literature studies. The specifications in this study are descriptive analysis. Secondary research materials originating from laws and regulations relating to the writing carried out. To obtain the data in this writing, secondary data collection methods were used which were obtained from library books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.⁷

3. Results and Discussion

3.1. Individual Parameters that can be Grouped as Justice Collaborators in Revealing Legal Facts of Corruption Crimes

Justice Collaborator is a British term adopted by Indonesia from America. This term is not a legal term because it cannot be found in the KUHAP, but this term has been used in Indonesian legal practice. Justice collaborators are suspects whose

⁵Muhamad Riyadi Putra and Gunarto, Analysis Of Handling Practices On Corruption Crime By Police (Case Study In Special Criminal Investigation Police Directorate Of Central Java), Journal of Daulat Hukum Volume 2 Issue 2, (2019), p.210

⁶Endy Dasaatmaja, Investigating Prosecutor Policies Related To Completion Deadline Of Financial Losses Calculation Of The Corruption Case By Internal Government Auditor (APIP) Case Study In State Attorney Of Grobogan, Daulat Hukum Journal Volume 2 Issue 2, (2019), p.228

⁷Abdul Haris, Umar Ma'ruf, and Sri Kusriyah, Role And Function Of Attorney In Order To Optimize The Prevention Of Corruption Through Establishment Of TP4P/D (Case Studies In State Attorney Of Grobogan), Journal of Daulat Hukum Volume 2 Issue 4, (2019), p.454

position is as witnesses in relation to criminal acts of corruption that aim to reveal comprehensive corruption crimes. Justice Collaborator is a new term in Indonesia, but in Indonesia there is the term Crown Witness, which is one of the perpetrators of a crime who is used as a key witness to uncover a crime.⁸

According to Abdul Haris Semendawai, the urgency to empower suspects or defendants to provide information and cooperate in dismantling extraordinary crimes in Indonesia is based on several reasons, namely as follows:

- 1) First, it is difficult to dismantle extraordinary crimes because these crimes are committed by criminal organizations that are carried out in an organized, planned and hidden manner. So to uncover the crime requires information from the insiders involved. If the person concerned openly provides information and testimony to law enforcement officials, his statement will be used as evidence to be used in prosecuting criminal responsibility against other criminal offenders who have a more important role.
- 2) Second, the practice of using information from suspects or defendants has been implemented in several countries such as the United States and Italy. From the cases handled, it has succeeded in uncovering and dismantling criminal acts committed by a number of mafia organizations.
- 3) Third, in order to protect the human rights of suspects or defendants which have been regulated in a number of international human rights instruments that have been ratified by Indonesia.⁹

The several conditions for someone to be said to be a justice collaborator are:

- 1) The criminal acts revealed were serious and/or organized crimes, such as corruption, gross human rights violations, drugs, terrorism, ML, trafficking, forestry. So for the case of minor crimes, this term is not recognized.
- 2) The information provided is significant, relevant and reliable. The information provided can actually be used as a guide by law enforcement officials in disclosing a crime so as to facilitate the performance of law enforcement officials.
- 3) A person with the status of a justice collaborator is not the main actor in the case because his presence as a justice collaborator is to reveal who is the main actor in the case. He only played a small role in the occurrence of the case but knew a lot about the criminal case that occurred.

⁸Thomas J. Bernard and Robin Shepard Engel, *Conceptualizing Criminal Justice Theory*, Justice Quarterly, Vol.18 No.1, (2001), p. 3-4.

⁹Abdul Haris Semendawai, *Determination of Justice Collaborator Status for Suspects or Defendants in a Human Rights Perspective*, Padjadjaran Journal of Legal Studies Volume 3 Number 3, (2016). p. 483.

- 4) He admitted his actions before the law and is willing to return the assets he obtained by way of the crime in writing.
- 5) The Public Prosecutor in his charge states that he has provided very significant information and evidence so that investigators and/or public prosecutors can uncover the crime in question effectively, uncover other actors who have a bigger role and/or return assets/proceeds of a crime.¹⁰

3.2. Formulation of the Rule of Law governing the protection of witnesses for justice collaborators in criminal acts of corruption

In its development, the Supreme Court Circular Letter Number 04 of 2011 concerning the Treatment of Whistleblowers and Witness Collaborators in Certain Crime Cases emerged, this SEMA clearly states how guidelines for implementing a person can be used as Justice Collaborator.

However, a provision that is used as a provision for the implementation of a law is usually made in the form of a government regulation or other lower level regulations. Therefore, it is interesting to study the position of circular letters in the Indonesian legal system. Legal products in the form of "Circular Letters" both before and after the enactment of Act No. 10 of 2004 concerning the Establishment of Legislation, now replaced by Act No. 12 of 2011, is not categorized as a type of legislation, thus its existence is not at all bound by the provisions of Act No. 10 of 2004 (UU No. 12 of 2011).

In the book General Guidelines for Service Manuscripts printed on January 2004 Edition and Permen No. 22 of 2008 issued by the Ministry of Administrative and Bureaucratic Reform, the definition of a circular letter is "official text containing notifications about certain things that are considered important and urgent. Furthermore, in Permendagri No. 55 of 2010 Article 1 number 43 it is explained: Circular Letters are official documents that contain notifications, explanations and/or instructions on how to carry out certain things that are considered important and urgent.

In fact, the SEMA does not provide implementation guidelines, and even raises several problems, among others, if there is a conflict of interest, as in the case of Komjen Pol Susno Duadji, which institution has the authority to provide legal protection? Because this SEMA only applies to the scope of prosecution and examination in court. Whereas at the Police stage it is only a copy, meaning it is

¹⁰Antonius Yoseph Bou, I Nyoman Sujana and I Ketut Sukadana, Legal Protection for Witness Collaborators in Corruption Cases, Journal of Legal Analogy, Volume 2, Number 2, (2020), p.144

not binding on POLRI.¹¹

SEMA as an implementation guide and guide does not explain how much leniency will be given to justice collaborators. If we look at the Agus Condro case, the prosecutor demanded 1 year and 5 months and received relief from the Panel of Judges because Agus Condro only served as a reporter for 3 months, now 1 year and 3 months. So big was the case revealed by Agus Condro, but he only received 3 months of relief. Furthermore, what is classified as when someone reports a suspected crime and it turns out that he is also one of the perpetrators? The Witness of the Actor or the Complainant? What if a Complainant loses his immunity due to bad faith? Is the report automatically rejected or what?

After the renewal of Act No. 13 of 2006, became Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims, reaffirming and re-specifying the existence of justice collaborators in being given legal protection for implications for the smooth dismantling of cases such as criminal acts corruption.

Basically, philosophically juridically, the legal substance of the Justice Collaborator in Indonesia first came out and became known through the Supreme Court Circular Letter No. 4 of 2011. However, legal protection arrangements regarding Justice Collaborators were new when Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims was issued, specifically in Article 10A paragraph (1) to paragraph (5). This article is an integral part of the changes to Act No. 13 of 2006, which in the law does not recognize and regulate witnesses who work together or Justice Collaborators.¹²

Article 10A Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims which is used as the legal basis for protection for Justice Collaborators:

The process of examination and appreciation of the testimony given. Paragraph 2 The special handling as referred to in paragraph (1) is in the form of: Paragraph 2 a separation of the place of detention or the place of serving a sentence between the perpetrator witness and the suspect, defendant and/or convict whose crime has been disclosed; Paragraph 2 b Separation of filings between the dossiers of witnesses and the dossiers of suspects and defendants in the process of investigation and prosecution of the criminal acts disclosed; and/or; Paragraph 3

¹¹Claudhya C. Coloay, Legal Protection for Justice Collaborators in Money Laundering Crimes According to Law no. 31 of 2014 Concerning the Protection of Witnesses and Victims, *Journal of Lex Crime*, Vol.7 No.1, (2018), p.178

¹²Rusli Muhammad, Arrangement and Urgency of Whistle Blower and Justice Collaborator in the Criminal Justice System; *Journal Articles; Ius Quia Iustum*; Vol.22 No.2, (2017), p.351

c gives testimony before the court without dealing directly with the defendant whose criminal act has been exposed. Paragraph 3 the award for testimony as referred to in paragraph (1) is in the form of: Reduction of criminal convictions; or parole, additional remission, and the rights of other convicts in accordance with the provisions of laws and regulations for witness witnesses who are convicts. Paragraph 4 to obtain an award in the form of relief from criminal imposition as referred to in paragraph (3) letter a, the LPSK provides a written recommendation to the public prosecutor to include in his charge to the judge. Paragraph 5, in order to obtain awards in the form of parole, additional remissions, and other convict rights as referred to in paragraph (3) letter b, the LPSK provides written recommendations to the minister administering government affairs in the field of law.

In issuing the Justice Collaborator status, the Attorney General's Office will first look at the files handed over by police investigators to the Attorney General's Office. If in the dossier of the perpetrator it is stated that the perpetrator has been designated as a witness for the perpetrator who can cooperate or Justice Collaborator, then the prosecutor's office will just have to continue with what has already been done. However, if in the handing over of files by police investigators to the prosecutor's office there is no Justice Collaborator status for the perpetrator, the prosecutor's office has the authority to determine whether the perpetrator can be designated as a Justice Collaborator or not.

4. Conclusion

Basically, philosophically juridically, the legal substance of the Justice Collaborator in Indonesia first came out and became known through the Supreme Court Circular Letter No. 4 of 2011. However, legal protection arrangements regarding Justice Collaborators were new when Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims was issued, specifically in Article 10A paragraph (1) to paragraph (5). This article is an integral part of the changes to Act No. 13 of 2006, which in the law does not recognize and regulate witnesses who work together or Justice Collaborators. Due to the complexity of existing norms regarding justice collaborators, Act No. 13 of 2006 revised by Act No. 31 of 2014 especially in Article 10 of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 the formulation of the norms is (1) Witnesses, Victims and Witnesses of Perpetrators and/or Reporters cannot be prosecuted legally, both criminally and civilly for testimony or reports that will be, are being or have been given, unless the testimony or report is given not in good faith Good.

5. References

Abdul Haris Semendawai, Determination of Justice Collaborator Status for

Suspects or Defendants in a Human Rights Perspective, *Padjadjaran Journal of Legal Studies* Volume 3 Number 3, (2016)

Abdul Haris, Umar Ma'ruf, and Sri Kusriyah, Role And Function Of Attorney In Order To Optimize The Prevention Of Corruption Through Establishment Of TP4P/D (Case Studies In State Attorney Of Grobogan), *Journal of Daulat Hukum* Volume 2 Issue 4, (2019)

Antonius Yoseph Bou, I Nyoman Sujana and I Ketut Sukadana, Legal Protection for Witness Collaborators in Corruption Cases, *Journal of Legal Analogy*, Volume 2, Number 2, (2020)

Claudhya C. Coloay, Legal Protection for Justice Collaborators in Money Laundering Crimes According to Act No. 31 of 2014 Concerning the Protection of Witnesses and Victims, *Journal of Lex Crime*, Vol.7 No.1, (2018)

Endy Dasaatmaja, Investigating Prosecutor Policies Related To Completion Deadline Of Financial Losses Calculation Of The Corruption Case By Internal Government Auditor (APIP) Case Study In State Attorney Of Grobogan, *Daulat Hukum Journal* Volume 2 Issue 2, (2019)

Gustav Radbruch, *Statutory Lawlessness and Supra-Statutory Law* (1946), *Oxford Journal of Legal Studies*, Volume 26, No. 1, (2006)

John Rawls, 2011, *Theory of Justice: Fundamentals of Political Philosophy to Realize Social Welfare in the State*, Yogyakarta: Student Library

Muhamad Riyadi Putra and Gunarto, Analysis Of Handling Practices On Corruption Crime By Police (Case Study In Special Criminal Investigation Police Directorate Of Central Java), *Journal of Daulat Hukum* Volume 2 Issue 2, (2019)

Rusli Muhammad, Arrangement and Urgency of Whistle Blower and Justice Collaborator in the Criminal Justice System; *Journal Articles; Ius Quia Iustum*; Vol.22 No.2, (2017)

Septian Nanang Pangestu and Lathifah Hanim, The Role of Prosecution Related to Prosecutor's Demand in Enforcing the Criminal Action of Narcotics, *Jurnal Daulat Hukum* Volume 4 Issue 1, (2021)

Supriadi Widodo Eddyono. Prospects for Protection of Justice Collaborators in Indonesia, Comparison with America and Europe. *Comparative Journal*, Vol.1 No.1, (2011)

Thomas J. Bernard and Robin Shepard Engel, Conceptualizing Criminal Justice Theory, Justice Quarterly, Vol.18 No.1, (2001)