

**Justice Collaborator as the Effort to Eradicate Corruption**Alwan Hadiyanto<sup>1,2\*</sup>, Mahmutarom HR<sup>3,4</sup>, Sri Endah Wahyuningsih<sup>3</sup><sup>1</sup>Doctoral Student, Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia<sup>2</sup>Faculty of Law, Universitas Riau Kepulauan, Batam, Indonesia<sup>3</sup>Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia<sup>4</sup>Faculty of Law, Universitas Wahid Hasyim, Semarang, Indonesia**\*Corresponding author***Alwan Hadiyanto***Article History***Received: 18.12.2018**Accepted: 26.12.2018**Published: 30.12.2018***DOI:**

10.21276/sjhss.2018.3.12.15



**Abstract:** The government provides criminal law policies to someone who wants to be a whistleblower and a justice collaborator of corruption. The criminal law policy is enforced in Law No. 31 of 2014 as a complement to the weaknesses of Law No. 13 of 2006 and several other regulations. Regarding the amount of government appreciation given in the form of protection and appreciation, it is necessary to know how important the role of a whistleblower and justice collaborator is in uncovering the main criminal acts of corruption in assisting the criminal justice system in this country. This paper was carried out at the Witness and Victim Protection Agency. The data obtained are primary data and secondary data. Also, primary data collection techniques are also carried out by interviewing the parties concerned which are then analyzed descriptively. The data obtained is then processed and reviewed based on the formulation of the problem that has been applied so that it is expected to obtain a clear and concrete picture of the objects discussed qualitatively and subsequently presented descriptively namely explaining, elaborating, and describing by the problems closely related to this research. In giving testimony in general, the Justice Collaborator is motivated by a reduction in the period of detention or from his heart. Indeed he intends to repent. However, also in the testimony sometimes a Justice Collaborator is disturbed or hindered by his fellow friends who commit a crime, and this is what every country in the world needs to regulate so that the dismantling of a crime can run optimally. In responding to Corruption cases, countries in the world have reacted with various rules so that they can create a deterrent effect for the perpetrators of the crime, as well as the rules regarding Whistleblowers and Justice Collaborators they have included in their country's Law. However, in Indonesia, the rules regarding witnesses of new perpetrators and reporters are regulated in the 2011 Supreme Court Circular.

**Keywords:** Whistleblower, justice collaborator, corruption, crime.

**INTRODUCTION**

The arrangements relating to the Justice Collaborator are regulated in Article 1 Point (3), such as witnesses of the perpetrators who are cooperating are witnesses who are also perpetrators of criminal acts who are willing to assist law enforcement officials to disclose a criminal act or a criminal offense to return assets or the results of a criminal offense to the state by providing information to law enforcement officials and giving testimony in the judicial process.

Justice collaborator is a witness of the perpetrator, who is not the main actor, who cooperates with law enforcement in disclosing the intended crime. The state system of government which is affirmed in the 1945 Constitution that the State of Indonesia is a state of law, in other words, the constitution of the 1945 Constitution has placed the law in a supreme and decisive position in the Indonesian state and government system. The principle of legal state viewed from the aspect of implementing the law implies that all

government actions and actions of the community must always be by applicable law. Thus in the administration of government, all government actions must always be based on the general principle of good governance.

The concept of the rule of law leads to the aim of creating a democratic life and protecting human rights and equitable welfare. As a legal state, Indonesia has not yet reached the stage of the ideals of the rule of law. Various portraits shows the low quality and professionalism of law enforcement officers, including regarding efforts to eradicate corruption. The phenomenon of the culture of corruption in this country is rampant. Corruption is not only carried out by state administrators, between state administrators but also involves other parties such as families, cronies, and entrepreneurs, thus damaging the joints of life in the community, nation, and state, which can endanger the existence of the State administration function.

The role of the Justice Collaborator is someone as a suspect but not the leading actor and can dismantle the people involved in it. In this case, even though he has been corrupted but he also gets relief because he has helped in the process of dismantling facts and justice. In this thesis, the author will discuss the role and actions taken by the Justice Collaborator who can assist Investigators and other reasons that can alleviate him.

Law No. 13 of 2006 concerning the Protection of Witnesses and Victims does not define reporters both as Whistleblowers and Justice Collaborators. However, the absence of understanding does not then eliminate the rights that must be given to them and must be fulfilled by LPSK. Because both Whistleblower and Justice Collaborator were both considered as witnesses when reporting a corruption case. The concept of Justice Collaborator is essentially the same as the concept of inclusion in the provisions of articles 55 and 56 of the Criminal Code, where a person's involvement in a corruption case and he reports the case to law enforcement officials in several possibilities, such as those who participate with others committing corruption, people who commit corruption at the suggestion of people and people who help others commit corruption.

Assessed from a juridical perspective, corruption is an extraordinary crimes as stated by Romli Atmasmita, as follows: By paying attention to the development of corruption, both in terms of quantity and quality, and after studying it in depth, then it is not excessive if it is said that corruption in Indonesia is not an ordinary crime (ordinary crimes), but it is a crime that is very extraordinary (extra-ordinary crimes). Furthermore, if examined from the side of the negative effects or impacts that have severely damaged the life order of the Indonesian nation since the New Order government until now, it is clear that the act of corruption is the deprivation of economic rights and social rights of the people of Indonesia [1].

Given the crime of corruption is always carried out in the congregation, and carried out by people who are classified as having high intelligence, so that in revealing the perpetrators sometimes experience obstacles in determining the evidence and evidence to drag the perpetrators, especially the main perpetrators. So according to the author, one of the breakthroughs carried out by criminal law is by trying to give an opportunity to witnesses who are aware of corruption to immediately report to law enforcers with compensation to be given protection and legal privileges, this witness is better known as a whistleblower. As with the perpetrators of these crimes, they are given the opportunity to become witnesses and want to cooperate with law enforcement, the form of appreciation is that they can be considered to be given protection and

waiver, witnesses who cooperate are commonly called justice collaborators.

The use of whistleblower and justice collaborator in criminal justice is one form of extraordinary effort that can be used to help efforts to eradicate criminal acts of corruption, because a whistleblower is a person who knows the crime that is included in the network which is usually an employee to dare to report a crime the law enforcer, while justice collaborators do many actors, and the perpetrators are willing to cooperate with law enforcement officials. The role of witnesses as a whistleblower and justice collaborator is significant in the process of disclosing criminal acts of corruption.

Justice Collaborators and Whistleblowers who report corruption cases are people who have the courage and strong mentality. Because, the person already knew the bad things that happened to them because the report, like being threatened, intimidated, persecuted, dishonorably dismissed from his position or even killed. The presence of LPSK has an essential and strategic role so that courage and strong mentality continue until the person gives information or testimony in the investigation or even in the trial of corruption cases [2].

In other words, LPSK is required to fulfill a number of human rights possessed by a Whistleblower or Justice Collaborator, including the right to obtain protection for the personal security of the family and property, and to be free from threats relating to reports, testimonies, which will, are and he has given, the right to provide information without pressure, get a new identity, get a new residence, get a change in transportation costs as needed, and get a legal advisor. Although in some cases, the Justice Collaborator often becomes a victim because of certain things, it could be because of his position, or maybe he is afraid of his superiors who should be responsible for it, or they have been threatened with specific reasons, so as not to drag the people involved on it [3].

Relating to its role in assisting law enforcement agencies in uncovering corruption cases it is very important to be accompanied by such privileges that it requires integrity and professionalism from objective law enforcement agencies in handling corruption cases including genius in influencing perpetrators to cooperate, as well as his intelligence in determining the title of a whistleblower and justice collaborator, where the determination is without any intervention from anyone and any political interests [4].

Therefore, the author took the initiative to explore and review more about criminal law policies to maximize the role of whistle-blowers or reporters and witnesses of collaborating actors or justice collaborators in assisting law enforcers to uncover corruption that

tends to be closed and organized, and how legal procedures in determining a whistleblower and justice collaborator, of course by linking the laws governing this matter.

However, in some cases, there is also Justice Collaborator who dares to dismantle a problem relating to corruption, for example, Muhammad Nasaruddin who dragged the youth and sports minister Andi Malarangeng and Anas Urbaningrum as chairman of the Democratic party, in the Hambalang project and the athlete's house. What was done by Nasaruddin indeed deserves to be appreciated so that state losses due to criminal acts of corruption can be reduced, and returned to the State? Moreover, all of this also does not escape the role of the KPK (corruption eradication commission), as well as other relevant officials, in supporting the dismantling of facts and justice. The future hope of this nation is to be free from corruption so that Indonesia can become a prosperous and sovereign country and firm in law enforcement.

## **RESULTS AND DISCUSSION**

### **Forms of Legal Protection for Justice Collaborators in Indonesia**

One of the problems in efforts to eradicate criminal acts of corruption is the issue of law enforcement, especially the judicial process. The UN Anti-Corruption Toolkit says that "The development of the convention shows that efforts to control corruption must go beyond the criminal law," a significant element of the package. Must go beyond criminal law and the steps or actions of criminal justice are still the main elements of the package [5]. Many of these steps or actions are also caused by obstruction of the judicial process.

Barring the judicial process of corruption, regulated in Article 25 of the UN convention against corruption. The article states that each state party is obliged to take legislative and other actions deemed necessary to establish a criminal offense if done intentionally:

- The use of physical force, threats or intimidation or promises, offering or giving undue benefits to encourage false testimony or disturbing in giving testimony or proof of production in a process about criminal acts determined by this convention.
- The use of physical force, threats or intimidation to interfere with the implementation of official duties by the judiciary or law enforcement about criminal acts determined by this convention.

Besides the provisions of article 25 above, article 32 of the convention against corruption, is also very closely related to the obstruction of the judicial process, especially about witnesses. Ferguson commented on the provisions of article 32, stating that:

- Article 32 paragraph (1) requires the state to 'take appropriate measures' (to take appropriate measures) to provide effective protection from retaliation or intimidation against witnesses who provide information in corruption cases (retaliation intimidation for witnesses who give testimony in corruption cases) and, if necessary, over families and people close to them.
- The obligation of the state to take appropriate action limited to actions that are 'by its national legal system' and 'within its limits.' Effective protection measures can be costly, and therefore there is a real concern that in some countries these actions may or may not be very limited due to lack of financial resources.
- Article 32 paragraph (1) expressly states that the provision applies to 'witnesses who testify.' However, the UN legislative allows for the implementation of the convention indicate that these provisions must not be interpreted narrowly and must apply to all people who cooperate in investigations and prosecution of corruption cases, whether they gave testimony or not; and
- Article 32 paragraph (2) which refers to witness protection measures which may include: (i) procedures for physical protection (procedures for physical protection), including relocation and prohibition of disclosure of witness identity and whereabouts, and (ii) special verification rules to ensure the safety of witnesses, for example testimony that allows for video or other appropriate means [6].

So, criminalization of denial of the judicial process is a responsibility of the state. The state is required to regulate the obstruction of judicial proceedings, within the national scope of each country [7].

### **Obstacles to the Justice Collaborator when giving testimony in the Corruption Crime Case**

As discussed earlier, the legal basis for blocking the judicial process of corruption in Indonesia is Article 21 of Law Number 31 of 1999 concerning corruption, and Article 25 of Law Number 7 of 2006, concerning the endorsement of United Nations convention against corruption. Also, criminal law experts have formulated the obstruction of the judicial process in the draft law on the criminal law (RUU-KUHP), in 2008. These provisions are regulated in Chapter VI concerning 'Criminal acts against judicial proceedings,' specifically the section the second is about 'obstructing the judicial process.' The provisions are as follows:

Article 329, (1) shall be punished by imprisonment for a maximum of 7 (seven) years and a maximum fine of category IV for every person who is unlawful:

- By using violence or threats of violence or by intimidating investigators, investigators, public prosecutors, lawyers, and judges so that the judicial process is disrupted;
- Submitting false evidence or influencing witnesses in giving information in court proceedings; or
- Preventing, obstructing, or frustrating directly or indirectly the process of investigation, prosecution and examination in court proceedings.<sup>8</sup>
- Article 330, (1) Sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of category IV, any person who:
  1. Hiding a person who has committed a criminal act or a person charged with a crime;
  2. Assisting the person as referred to in a letter to avoid investigation or detention by an official authorized to carry out investigation or detention; or
  3. After a crime is committed, with the intention of covering or obstructing or complicating the investigation or prosecution, destroying, eliminating, hiding objects that are targeted or means of committing criminal acts or other former criminal acts or withdrawing them from examinations conducted by officials authorized to carry out investigations or prosecutions.

(2) the provisions referred to in paragraph (1) do not apply if the action is carried out with the intention of avoiding prosecution of the blood family or semen in a second degree straight line or on the third sideline or against his wife or husband or ex-wife or husband.

Article 331, every person who prevents, obstructs, or frustrates the examination of a corpse for the benefit of the court, is punished with a maximum of 1 (one) year imprisonment or a maximum fine of category II [8].

Article 332, every person who releases or provides assistance when someone escapes detention is carried out on the orders of an official authorized to detain or escape a criminal offense based on a judge's decision, sentenced to imprisonment for a maximum of three years or criminal fine most category IV.

Article 333, anyone who unlawfully does not come when called as a witness, expert or interpreter, or does not fulfill an obligation that must be fulfilled by the provisions of the applicable legislation, shall be punished by:

- A maximum of 1 (one) year imprisonment or a maximum fine of category II, for criminal cases; or
- Criminal fines are at most category II, for other cases.

Article 334, (1) Sentenced to a maximum imprisonment of 4 (four) years or a maximum fine of IV category, every person who:

- Removing goods from confiscation based on regulations of the law or from deposits at the order of a judge or hiding the item, even though it is known that the item is in confiscation or deposit; or
- Destroying, damaging, or making unusable items confiscated under the provisions of applicable legislation.

(2) Storage of goods that do, allow to do, or help carries out acts as referred to in paragraph (1), shall be punished with imprisonment for a maximum of 5 (five) years or a fine of at most categories IV. (3) If the action referred to in paragraph (2) occurs because of the negligence of the depositor, the maker of the criminal act shall be punished with a maximum of 1 (one) year imprisonment or a maximum fine of category II [9].

Article 335, every person who is based on the provisions of the applicable legislation must give a statement above the oath or statement that gives legal consequences, gives false information on an oath, either by oral or written, by himself or by a proxy appointed explicitly for that given in case hearings at court hearings and harms parties. The opponent, then the maker of a criminal act shall be punished with a maximum imprisonment of ten years or a fine of at most categories V.

Article 336, every witness and other person relating to a criminal act of terrorism, corruption, human rights, or money laundering that mentions the name or address of the reporter or other matters that give the possibility of knowing the identity of the reporter in the investigation and examination at the hearing the court is sentenced to a maximum of 1 (one) year imprisonment or a maximum fine of category II [10].

However, in the development of criminal law, it is now known as the concept of Restorative Justice which is capable of being a match for the principle of equality before the law and non-impunity. The concept of restorative justice states that not all people must be treated equally because there are things that distinguish the person from others so that the difference is that someone may not be convicted as long as he or she is responsible for recovering the losses caused.

In this case, the concept of restorative justice is very appropriate to be applied to protect Justice Collaborator with the following arguments [10]. The concept of Restorative Justice is based on the principle of inequality as justice. The contribution given by the Justice Collaborator in exposing corruption cases is the basis that distinguishes it from ordinary contributions. Thus, this contribution is the basis for avoiding it from punishment.

The concept of Restorative Justice will have a positive effect on a society where potential parties to become Justice Collaborators will no longer be afraid to disclose, and thus, corruption cases will be revealed in massive numbers. Based on the above thoughts, the concept of Restorative Justice which aims to recover the losses suffered by victims is very appropriate to be applied to the Justice Collaborator, because:

- Justice Collaborator has helped uncover the corruption cases he committed. The report is a substantial contribution in helping efforts to eradicate corruption.
- The abolition of the claim on the Justice Collaborator will cause the parties to disclose the corruption cases they committed. Thus, corruption cases will be exposed massively and significantly.

In this case, the responsibility held by the Justice Collaborator consists of:

- Responsibility for returning corrupt state money.
- Dismantle reported corruption cases to the roots.

This concept is an effort to recover losses suffered by the state due to corruption. The responsibility of Justice Collaborator regarding restoring state losses is what replaces punishment for the Justice Collaborator. The arrangements relating to the Justice Collaborator are regulated in Article 1 as follows, point (3): Witnesses of the perpetrators who cooperate are witnesses who are also perpetrators of criminal acts who are willing to assist law enforcement officials to disclose a criminal act or a criminal offense to return assets or the proceeds of a criminal offense to the state by providing information to law enforcement officials, as well as giving testimony in the judicial process.

Thus the rules regarding acts of conduct and treatment of the Justice Collaborator need to be considered more deeply so that someone who is involved in both the Whistleblower and the Justice Collaborator and even the police can be more nuanced and better work in dismantling an organized crime. Regarding the Whistleblower and the Justice Collaborator need to be rearranged, remembering SEMA and the joint regulations have not been widely binding. There is a good thing that the government makes a law which contains new rules about things they have to do, their protection solutions, and awards for those who reveal an event of a crime that occurred.

Therefore, the shared hope is that the substance contained in Law No. 31 of 2014 really be a refinement of the previous law, namely Law No. 13 of 2006 concerning the protection of witnesses and victims, and the hope of the author who is also a hope many people hope that the latest law can accommodate all existing criminal law policies so that they have more permanent legal force and have a position in the legislative

hierarchy. Moreover, then the writer will try to criticize of course with the subjective view of the provisions in relation to the criminal law policy contained in Law No. 31 of 2014 concerning the protection of witnesses and victims, then what is expected by society in general, and the author, in particular, can be realized in this latest law.

### **Regulation of criminal law against the Justice Collaborator in Corruption Crime**

Justice collaborator has a very dominant and strategic role in helping law enforcement officials to uncover and uncover criminal acts. That is because a Justice Collaborator is a person who plays a role in the occurrence of organized crime and carried out in congregation such as a criminal act of corruption. However, the position of a Justice Collaborator is not the main actor in the occurrence of a criminal act of corruption. Such people can be used as a source of information about the presence of suspects and other evidence in criminal acts of corruption that have not been found by law enforcement.

Justice collaborator is often used to reveal dishonesty and irregularities committed by himself and his colleagues in a criminal act. This effort is certainly not an easy job because he must express honestly what he has done with his colleagues in an organized crime which in this case he will also get a burden on what he revealed in the testimony. If it is reviewed based on the role of a strategic justice collaborator to accelerate disclosure of an organized crime, the need for legislation governing justice collaborators is very necessary so that strong political will is needed from both the government and the DPR and from all interested parties to implement Justice collaborator, especially in corruption cases.

From the Criminal Procedure Law, there is a level of difficulty in proof because the principle of the main evidence in a criminal act is the testimony. The character of organized crime that prevails among perpetrators of crime is loyalty known as "silent testimony or oath of silence (omerta)", which is an unwritten commitment and rule among mafia members who are not easily swayed. Violation of the omerta is the ransom for anyone who violates it. Therefore, the role of justice collaborator is a powerful means of proof to disclose and dismantle organized crime, whether it is a crime or serious scandal crime in a criminal act. Justice collaborator can be used as a verification tool in the disclosure of new dimension crime, such as corruption which is detrimental to the country's economy and modes of corruption using hi-tech, financial assistance from the results of corporate crime, customer fraud, illegal fishing, illegal labor, and cybercrime [11-14].

The problems faced in Indonesia today are that the Justice Collaborator arrangement has not been regulated in the Criminal Procedure Code. The provisions in the Criminal Procedure Code only regulate the rights of an actor in the criminal justice process. In the aspect of the criminal procedure law itself, the arrangement of witnesses in collaboration (Justice Collaborator) is carried out by revising the provisions contained in the Criminal Procedure Code (KUHP) by providing adequate arrangements in criminal justice. In the draft revision of the Criminal Procedure Code, the regulation of the crown witnesses who previously had not been regulated in the criminal justice process has included a regulation.

However, the terms used in the Criminal Procedure Code have differences and do not recognize the term Justice Collaborator to show someone who helps law enforcement officers to help uncover criminal acts. The Criminal Procedure Code uses the term crown witness, which is a legal term used in the Dutch Wetboek van Strafvordering (KUHP). Although there are similarities between the crown witnesses and Justice collaborator, both of which are perpetrators in a criminal act, but if viewed from the aspect of initiative to provide information about a crime, then there are significant differences between the crown witnesses known in the Criminal Procedure Code and Justice collaborator which is a term adopted from America.

At the crown witness, the initiative to provide information came from law enforcement officials who had difficulty in disclosing a crime because of lack of other evidence (minimum bewijs) so that law enforcement officers took one of the perpetrators who had a minimal role as a witness against other perpetrators by means of separate case files (split) between crown witnesses with other actors.

## CONCLUSION

Justice Collaborator is a person who is involved in an organized crime involving more than two people, therefore this crime is tough to prove, and by that person the person who becomes the Justice Collaborator is a significant individual because he can dismantle a crime and certainly can provide evidence to drag the main actors and other suspects. Although Justice Collaborator is a threatened individual but its protection in Indonesia does not meet international standards based on the discussion in chapter III, so it needs to be rearranged. Moreover, if he is involved in corruption where this action generally involves many people and officials, those who are called by the Justice Collaborator and are dragged along will undoubtedly have a sense of revenge, the more he mentions, the more enemies of a Justice Collaborator. If we compare with the treatment of Justice Collaborators in various countries, then we will be able to conclude that Justice

Collaborator is the party that helps in the dismantling of facts and justice. Moreover, after we see the current criminal law policy towards the Justice Collaborator, we can also understand the things that are applied to the Justice Collaborator at this time.

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