

# JURIDICAL ANALYSIS OF JUSTICE COLLABORATOR TO SUSPECTS OR DEFENDANTS OF CORRUPTION CRIMINAL ACTIONS AS LEGAL CONSIDERATION TO REDUCING THE DEPENDANT'S PUNISHMENT

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## ABSTRACT

*Legal arrangements regarding justice collaborators have not been comprehensively regulated in positive law in Indonesia. The thesis writing method uses normative and empirical legal research methods. The results of the research show that Justice Collaborator is still not regulated in a clear and detailed manner; The implementation of the provision of Justice Collaborator to suspects or defendants of criminal acts of corruption as a judge's consideration to reduce the defendant's punishment has not been fulfilled as expected, indicating that the sentencing of crimes by judges has not been standardized in the spirit of appreciation for a justice collaborator for his services in uncovering a criminal case; Constraints or obstacles are because SEMA is not an obligation that must be followed by judges and there is no harmonization of the perspectives of law enforcers.*

**Keyword :** *Justice Collaborator, implementation, inhibiting factors/constraints.*

## Preliminary

The regulation on Justice Collaborator has not been comprehensively regulated in positive law in Indonesia. This has resulted in various views and responses by law enforcement regarding Justice Collaborator. Circular Letter of the Supreme Court (SEMA) Number 4 of 2011 concerning the Treatment of Criminal Whistleblowers (whistleblowers) and witnesses of collaborating perpetrators (Justice Collaborators) in certain criminal cases only applies to the internal circle of the Supreme Court. In point 9 of SEMA No. 4 of 2011 it is explained that the guidelines for determining a person as a Witness of Cooperating Actors (Justice Collaborator).

With the stipulation of a suspect as a Justice Collaborator, it is hoped that it can assist law enforcement in uncovering larger crimes or other perpetrators who should be responsible. On the other hand, the determination of the Justice Collaborator will prevent the suspect or defendant in a corruption case from being threatened with the most severe punishment. We heard that some of the suspect proposes as a Justice Collaborator. For example, Muhammad Nazaruddin, who is a former General Treasurer of the Democratic Party, proposed as a Justice Collaborator, and his role at that time was considered successful in helping the Corruption Eradication Commission (KPK) uncover a number of other corruption cases.

Furthermore, in the e-KTP case, there were three defendants who received Justice Collaborator status, namely Sugiharto, Irman and Andi Agustinus or Andi Narogong with different verdicts. Based on the court's decision, it shows that there is no guarantee that the Justice Collaborators will get their rights so that the punishments will be lighter.

## Problem Formulation

Based on the background described above, the problems to be studied and discussed in this study are as follows:

1. What is the legal arrangement for granting Justice Collaborator to a suspect or defendant of a criminal act of corruption as a judge's consideration to lighten the defendant's punishment?
2. How is the implementation of providing Justice Collaborator to a suspect or defendant of a criminal act of corruption as a judge's consideration to lighten the defendant's punishment?
3. What are the factors that become obstacles in granting Justice Collaborator to suspects or defendants of corruption crimes as a judge's consideration to lighten the defendant's punishment?

## heoretical Framework and Conceptual Framework

Grand Theory which is the basis for writing this thesis proposal is the Theory of Legal Protection. The ideal of the rule of law was first put forward by Plato and then this thought was confirmed by Aristoteles. And J.B.J.M. Ten Berge which emphasizes the principles of the rule of law namely the principle of legality, protection of human rights, the government is bound by the law, the monopoly of government coercion to ensure law enforcement, supervision by independent judges. Next is the positive legal theory proposed by John Austin which argues that the law is an order from the ruler, and the law is strictly separated from morals. Laws are coercive orders, which can be wise and just, or vice versa. This aspect also determines the law as law.

Middle theory in this study is according to Lawrence M. Friedman, the legal system is built by three components, namely: legal structure, legal substance (legal substance), and legal culture. These three components of the legal system are actually complementary and are in a functional relationship. In upholding the rule of law, the three components of the legal system must be developed simultaneously and integrally. The Applied Theory in this research is the Theory of Legal Development by Philippe Nonet and Philip Selznick, which is a theory adopted from legal studies according to the perspective of political science, arguing that there are three types of law in the theory of legal development, namely: type of repressive law. In simple terms, repressive law can be interpreted as a law that serves repressive power and repressive social order. In other words, repressive law is a tool of repressive power or action. In addition, this repressive law does not guarantee substantive justice so that the authorities have the potential or make authority more effective in order to maintain the status quo. The theory of legal development proposed by Mochtar Kusumaatmadja is law as a tool for community renewal and development, which serves to maintain order in a developing society.

## Research methods

The specification of this research is normative or doctrinal legal research which is also referred to as library research. To support the juridical analysis, this study also uses primary data (Empirical Method). Data collection techniques are by studying literature, conducting observations and interviews. The data analysis technique is carried out by using "IRAC" namely selecting issues (issues), determining the relevant legal regulations (rule of law), and then analyzing the facts from a legal perspective (analysing the facts), finally resulting in the preparation of a conclusion (conclusion).

## Discussion

### 1) Legal Arrangements for Justice Collaborator

Corruption can be considered and seen as a form of administrative crime that can hinder development efforts in order to realize people's welfare. In addition, corruption can also be seen as an act of violating legal rules and other social norms.

Mas Achmad Santosa gives an understanding of Justice Collaborator, namely: "Justice Collaborator or collaborating actor is someone who assists law enforcement officers by providing reports, information, or testimony that can reveal a criminal act in which the person is involved in the crime or other criminal acts.

Justice Collaborator itself in Indonesian law is still not regulated clearly and in detail, the laws and regulations which implicitly include Justice Collaborator can be seen in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which has been renewed by Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 which regulates the provision of awards or rewards to parties who cooperate or provide assistance in eradicating criminal acts of corruption contained in Article 42 paragraph (1).

Other regulations are contained in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims in which there are provisions regarding the protection of witness collaborators (Justice Collaborator) contained in Article 10 and Article 10A.

Other laws and regulations can be seen in the Criminal Procedure Code, but what is regulated in the Indonesian Criminal Procedure Code is used the term "crown witness". Where in Article 142 and Article 168 letter a of the Criminal Procedure Code implicitly regulates the "crown witness"

Seeing from the expert understanding above regarding crown witnesses and their legal arrangements, it can be concluded that there are differences between crown witnesses and Justice Collaborators, namely crown witnesses can be released from criminal charges given to them, but for someone who has Justice Collaborator status cannot be released and the benefits obtained when someone having Justice Collaborator status, namely the possibility of getting rewards in the form of leniency in criminal penalties and parole, additional remissions, and the rights of other prisoners in accordance with the provisions of laws and regulations for perpetrator witnesses who are prisoners.

Another difference can be seen from the initiative of interested parties, where the crown witness is submitted through the initiative of the public prosecutor while the Justice Collaborator is the initiative of the defendant who has admitted his actions and is willing to cooperate in giving testimony to law enforcement to dismantle the case in which the defendant is involved in it. Judging from these differences, it can be ascertained that the crown witness and the Justice Collaborator are two different things in the legislation and legal practice in Indonesia.

There is no guarantee or it cannot be predicted whether this award can be obtained by the Justice Collaborator because it can only be carried out by judges who have the freedom to decide cases, not parties with which the Cooperating Actors can 'transact', such as investigators and public prosecutors. In principle, the implementation of the award to the Justice Collaborator is more of a legal politics that is in the hands of the executive, and is not fully binding on the judiciary. Therefore, to seek a reduction in the punishment for Justice Collaborators, it is necessary to start with the filing of lighter demands by the public prosecutor against the Cooperating Actor. Although the demands of the public prosecutor are not binding on the judge, but of course the judge will pay attention to these demands.

## 2) Implementation of Justice Collaborator Award

Justice Collaborator Having a strategic role in disclosing a criminal act has also become a concern in the concept of witness protection in Law Number 13 of 2006. Literally, the existence of a Justice Collaborator is not fully recognized in Law Number 13 of 2006, but basically the concept has been adopted in Article 10 of Law Number 13 of 2006.

In cases that handled by the Corruption Eradication Commission (KPK), the perpetrators of corruption crimes who have been designated as Justice Collaborators have been applied, as the results of interviews with Corruption Judges are as follows: "That all perpetrators with the status of Justice Collaborators who are handled by the Corruption Eradication Commission in the criminal prosecution file must be included as a matter of relief."

Furthermore, the reward given to Justice Collaborators in corruption cases in the form of the severity of the imposition of criminal sanctions is the domain of the panel of judges in the court of corruption. For this reason, the chairman of the Supreme Court of the Republic of Indonesia, for this reason, the Chairperson of the Indonesian Supreme Court (SEMA) No. 11 of 2014 concerning Treatment as a reporter for a crime (whistleblower) and a witness who cooperates (Justice Collaborator) in certain criminal cases.

In fact, from several cases involving a Justice Collaborator, the granting of waivers has not been fulfilled as expected. This indicates that the imposition of a crime by the judge has not been standardized in the spirit of appreciation for a justice collaborator for his services in uncovering a criminal case. Responding to this case of criminal disparity, Lili Pintauli (deputy chairman of LPSK) stated: "That the LPSK has reported to the Supreme Court regarding the severity of the crime received by a perpetrator who has the status of Justice Collaborator, only the judges argue that Supreme Court Circular No. 4 of 2011 is not mandatory to follow"

The existence of Justice Collaborator in corruption cases is also seen to be ignored in several cases. The first case is the procurement and installation of Solar Home System (SHS) at the Directorate General of Electricity and Energy Utilization of the Ministry of Energy and Mineral Resources in Fiscal Year 2007 and Fiscal Year 2008 with Defendant I Jacob Purnomo and Defendant II KA (Decision Number 59/Pid.B/ TPK/2012/PN.Jkt.Pst). Whereas in this case Defendant II KA as Justice Collaborator, the KPK considers KA's role as Justice Collaborator to be very important because it has effectively disclosed the crime in question.

The next disparity that occurs in the provision of rewards for Justice Collaborators who are perpetrators of criminal acts of corruption is in the bribery case of recommendations for exchanging forest areas in Bogor Regency. In this case, the defendants Rachmat Yasin and Kwee Chayadi Kumala were punishment to 7 years 5 months in prison and 6 years 5 months respectively. Meanwhile, FX YY who has the status of Justice Collaborator, the



Bandung High Court is of the opinion that the punishment imposed on defendant FXYY in the Court of first instance which handed down a prison punishment of 1 year and 6 months was increased on appeal to a punishment of 4 (four) years. Thus, there is no influence of the existence of Justice Collaborator with criminal convictions for the perpetrators.

In Hartati's case, the KPK as an institution that handles corruption cases has rejected Hartati's capacity as a Justice Collaborator. The KPK also refused to provide a recommendation for Hartati to get parole. This means that based on Government Regulation Number 99 of 2012 concerning Conditions for parole for Hartati, the conditions are not fulfilled, could not be accepted by law.

The point of view of judges, prosecutors, Witness and Victim Protection Institutions, or other investigators on different cooperating perpetrators makes it difficult to get rewards for collaborating actors, this is also due to the lack of harmony of regulations regarding collaborating actors. If differences in views on the determination of the Justice Collaborator in court often occur, the hope of carrying out the role of the Justice Collaborator in dismantling cases will recede. Where the suspect and the defendant will reconsider in collaboration with investigators and public prosecutors in court if the rewards obtained are not clear.

### **(3) Factors that are Obstacles and in the Provision of Justice Collaborators**

#### **1. Obstacles to Legal Arrangements**

There are 2 (two) things that can be an obstacle to the requirements to become a Perpetrator Witness who cooperates based on Article 28 paragraph (2), namely "the nature of the importance of information" given by the Perpetrator Witness and not as a "Main Actor" in the crime he discloses. The point is "the nature of the importance of information", because the determination of someone to be a Justice Collaborator is the authority of law enforcement (Corruption Eradication Commission, Police and Prosecutor's Office) for corruption cases. This point can be an obstacle in awarding criminal leniency. Because the judge will assess separately the importance of the Justice Collaborator's statement when giving testimony before a trial in revealing cases of corruption.

Because Law Number 13 of 2006 does not stipulate concretely regarding Justice Collaborators, the Supreme Court issues a Circular Letter of the Supreme Court (SEMA) Number 4 of 2011 concerning the Treatment of Criminal Whistleblowers (Whistleblowers) and Witnesses of Collaborating Perpetrators (Justice Collaborators). in certain criminal cases.

However, in practice, judges are still free to impose a light punishment on a person who is declared legally and convincingly proven to have committed a criminal act, including the status of a Justice Collaborator. The reason is that there is no guarantee of the right of criminal punishment for Justice Collaborators because the award is facultative, both SEMA Number 4 of 2011 point 9 letter c and Article 10 A paragraph (1) of Law Number 31 of 2014, there is the phrase "can". The consequence of the phrase "can" mean that the judge may or may not give an award for leniency in the punishment.

#### **2. Obstacles to Law Enforcement**

Some of the authority in granting justice collaborators that are given intersect with the duties of law enforcement officers with one another. The sectoral ego towards the granting of Justice Collaborator's rights also appears in the provision of rewards for Justice Collaborators.

Furthermore, the position of an advocate in the criminal justice system in Indonesia, namely in the Criminal Procedure Code (KUHP) is known for the role of a legal advisor. The role of an advocate is in every process in the criminal justice system. In the Criminal Procedure Code, the role of a legal advisor has existed since the investigation process to the rehabilitation process in the correctional institution. Various laws still do not place advocates as part of law enforcement officials, for example in Law no. 8 of 1995 concerning the Capital Market and Law no. 21 of 2011 concerning the Financial Services Authority. Both laws have not placed advocates as part of law enforcement officers.

### **Solutions to obstacles in providing justice collaborators to suspects or defendants of corruption crimes**

#### **1) Adequate Legal Arrangements Need**

The results of the interview show that the Justice Collaborator is important in taking action against corruption, so that the legal process that is running is revealed in such a way. It's just that the presence of Justice Collaborator must be regulated by norms. According to Hans Kelsen, law is a system of norms. Norms are statements that emphasize the "should" or *das sollen* aspects by including some rules about what to do. Norms are the product of deliberative human action.

Considering that the legal system of a community state is a reflection of the nation's culture, in addition there is an ideological reason that criminal law cannot be separated from the ideology of the Indonesian nation, namely Pancasila. Basically, the involvement of Justice Collaborators is a strategy to make it easier for law enforcement to reveal other perpetrators and find out who the main perpetrators are.

## 2) The Role of Law Enforcers

The results of interviews with Corruption Judges related to their attitude towards SEMA are not obligations that must be followed by judges, SEMA is only guidelines when finding cases involving a Justice Collaborator, but regarding the decisions of a judge, they remain independent." Basically SEMA Number 4 of 2011 has an internal binding nature, on the other hand witness protection starts from the pre-adjudication, adjudication and post-adjudication stages. One of the new roles for the Prosecutor is related to PP No. 99 of 2012, regarding remissions, the PP aims to improve the tightening of remissions based on the rules in PP. 28 of 2006 concerning granting remissions, but the granting of these rights is further tightened with the issuance of PP no. 99/2012.

Justice collaborator in an effort to obtain leniency, there must be a condition, namely that the Public Prosecutor in his claim must state that the person concerned has provided very significant information and evidence in the case brought to trial.

An advocate as a legal advisor plays a role in ensuring that the rights of a suspect, defendant and convict are not violated. Advocates act as a counterweight to the coercive measures provided by law to law enforcement. The role of this advocate becomes important. The absence of a legal advisor in the criminal justice process allows the occurrence of violations that affect the outcome of court decisions. Therefore, a legal advisor not only needs to be present but also has the competence to properly defend the rights of suspects, defendants and convicts.

## Closing

### 1. Conclusion

The conclusions in this study are as follows:

- 1) Justice Collaborator in the Indonesia's law is still not regulated clearly and in detail.
- 2) The implementation of providing Justice Collaborator to suspects or defendants of corruption as a judge's consideration to lighten the defendant's punishment has not been fulfilled as expected. This indicates that the imposition of a crime by the judge has not been standardized in the spirit of appreciation for a justice collaborator for his services in uncovering a criminal case.
- 3) Constraints or obstacles are because SEMA is not an obligation that must be followed by judges and there is no harmonization of the perspectives of law enforcers.

### 2. Suggestion

- 1) The need for regulation of Justice Collaborator in Indonesia's law is clear and detailed. So that in the future it is hoped that judges will remain independent in deciding corruption cases and include articles regarding guarantees for leniency in criminal penalties for witnesses who cooperate.
- 2) The need for harmonization of the perspectives of judges, prosecutors, Witness and Victim Protection Institutions, or other investigators on perpetrators to cooperate so that rewards for perpetrators can be given properly, so that suspects or defendants who become Justice Collaborators are motivated to reveal crimes to the fullest due to legal certainty regarding their actions. what he did.
- 3) The need for laws and regulations that regulate Justice Collaborators clearly and enter the hierarchy of laws and regulations, not only classified as policy regulations.

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