**DETERMINATION STATUS OF JUSTICE COLLABORATORS IN**

**CORRUPTION CRIME**

**Abstract**

Justice collaborator determination in Indonesia are still vacuum of law, this will have some negative impacts such as disparities. Thus, this is the background of the author in this research. The problems in this research are: How is the determination of justice collaborator in Indonesia? And how is the disparity in determining justice collaborators in Indonesia? In this study, the authors objectively describe regarding the determination of Justice Collaborator status against perpetrators of corruption. This research is normative research with the author arranged descriptively through a qualitative approach. The results of the research indicate that the regulation of justice collaborator in corruption crime in the criminal justice system in Indonesia has so far been contained in legal regulations: Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption 2003; Law Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime; Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims; Circular Letter of the Supreme Court Number 4 of 2011 concerning Treatment of Whistleblowers and Judicial Collaborators in Certain Criminal Acts. The disparity in the determination of justice collaborators in one of the Indonesia corruption cases shows that there are obstacles in the implementation of providing protection for Justice Collaborators so far. In addition, this disparity also has an impact on the reluctance of perpetrators to cooperate in dismantling the network of corruption cases, because they consider that there is no appreciation for the status of Justice Collaborator given by investigators and public prosecutors.

Keywords: Determination, Justice Collaborator, Corruption Crime

**INTRODUCTION**

Corruption in Indonesia believed to be widespread and deep-rooted will eventually undermine and destroy people (self-destruction) (Satjipto Rahardjo, 2006). Nyoman Serikat Putra Jaya stated that corruption cases have penetrated into the life of society, nation, state and endanger the existence of the state because corruption is not only committed by state officials, between state administrators, but also organizers with other parties (Nyoman Serikat Putra Jaya, 2001). Witnesses are one of the important factors in proving or revealing facts that will be used as a reference in finding other evidence to strengthen an investigation, and even evidence in court (Hana Krisnamurti, 2016). The importance of the witnesses role in the law enforcement process, especially criminal law, of course brings consequences for witnesses, both victim witnesses and reporting witnesses as well as other witnesses in proving the perpetrators of a crime (Josefhin Mareta, 2016).

The position of witnesses in the criminal justice process occupies a key position, as seen in Article 184 paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code o(KUHAP) (Lorens Werluka, 2019). As the main evidence, of course the impact will be felt if there are no witnesses in a case. The importance of the witnesses position in the criminal justice process has been started since the beginning of the criminal justice process. It must be admitted that the disclosure of violation law cases is mostly based on information from the public. Likewise, in the investigation process, the prosecution process at the prosecutor's level until finally in court, witness testimony as the main evidence becomes the judge's reference in deciding whether or not the defendant is guilty. So, it witnesses have a very big contribution to upholding the law and justice (Surastini Fitriasih, 2021).

It is not surprising that in the Indonesia criminal law system, witness is the obligation of every citizen, with the principle that every witness in giving testimony must free without any coercion from anyone. However, even if the witness is free to give testimony, the witness can also be prosecuted under Article 242 of the Criminal Code. It is because the witness provides information not in accordance with the truth (Djisman Samosir, 2013). However, the implementation of Article 242 of the Criminal Code is impossible to apply in absolutely. Therefore, at the practical level, there have been some modifications of the legal concept to the witness concept. Considering in the applicable legal system in Indonesia, the reference for law enforcement is testimony that can only be obtained from witnesses or experts.

In line with the development of legal protection for witnesses by reference of the development international law, the concept of witness law has developed. Generaly in Indonesia, there are several legal concepts regarding witnesses, namely Victim Witness, Fact Witness, Expert Witness, Child Witness, Reporting Witness, a Charge Witness, a De Charge Witness, Crown Witness, and testimony de auditu. Currently, by reference to the modification of criminal acts are more difficult, even in the international world, a concept has emerged as known Perpetrator Witness who cooperates or Justice Collaborator and Whistleblower (Rusli Muhammad, 2015).

The regulation of legal protection for Justice Collaborators and Whistleblowers, as stated by Padmo Wahyono rises logical consequence, not only the awareness of the temporality of a law, or an atmosphere of mysticism in design process, but also must contain regulations regarding the authority of state institutions which charged the obligations to apply the legislation (Padmo Wahyono, 1986).

The legal concept of Justice Collaborator in Indonesia has been accommodated in Law no. 13 of 2006 concerning the Protection of Witnesses and Victims which amended by Law no. 31 of 2014. As a follow-up to this provision, the Supreme Court issued a Supreme Court Circular (SEMA) Number 4 of 2011 concerning the Treatment Of Criminal Whistle Blowers and Justice Collaborators in Certain Criminal Cases. Justice Collaborator (JC) is a term for criminals who cooperate in providing information and assistance to law enforcement. Furthermore, the JC will receive an award in the form of a special conditional probation, granting remission, assimilation, parole, imposing the lowest sentence among other defendants, special treatment, and so on. The emergence of the existence of JC is based on several provisions including:

* Article 37 paragraph (2) of United Nations Convention against Corruption or UNCAC 2003 which reads: “…consider giving the possibility in certain cases, reducing the sentence an offender who provides substantial cooperation in the investigation/prosecution…”
* Article 37 paragraph (3) of UNCAC 2003 which reads: “… in accordance with the basic principles of national law to provide 'immunity of prosecution' for perpetrators who provide substantial cooperation in investigation/prosecution…”
* Article 10 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims

1. Victim witnesses and the Reporting Party cannot be prosecuted for their reports and testimonies.
2. A witness is also a suspect in the same case cannot be acquitted of criminal charges if he is proven legally and convincingly guilty, but his testimony can be taken into consideration by the judge in mitigating the sentence to be imposed.

* Article 197 number (1) letter F of the Criminal Procedure Code regarding the sentencing decision, one part of which discusses 'aggravating and mitigating circumstances'. In this case, mitigating circumstances include providing uncomplicated information, cooperative, never been convicted, young, kind/polite during the trial, and taking care of family members.

In addition, the existence of the Justice Collaborator is also supported by a Joint Regulation signed by the Minister of Law and Human Rights, the Attorney General, the National Police Chief, the Corruption Eradication Commission or KPK and the Head of Witness and Victim Protection Agency or LPSK regarding the protection of whistleblowers and Justice Collaborators. Almost the same as the provisions in article 37 of UNCAC 2003, namely article 26 of the United Nations Convention Against Transnational Organized Crime 2000 which was ratified by Law Number 5 of 2009. Criteria for justice collaborator are also listed in SEMA No. 4 in 2011.

In the realm of implementing Law no. 13 of 2006 in conjunction with Law no. 31 of 2014, it appears that there is a dualism of authority in determining someone as a Justice Collaborator, especially in special crimes such as corruption which is handled by the KPK. Article 12 of Law no. 13 of 2006 in conjunction with Law no. 31 of 2014 expressly gives the mandate to LPSK to apply legal protection to Justice Collaborators based on the request of the person concerned (Article 29 of Law no. 13 of 2006).

However, the KPK as a state institution authorized to handle corruption cases has the authority to accept or reject a person's application as a Justice Collaborator. As seen in the corruption case committed by Andi Narogong, who obtained the status of a Justice Collaborator. In fact, he was so persistent in fighting for Andi Narogong's status as a Justice Collaborator to the level of the cassation court, when the status was revoked by the appellate court (Tirto.id, 2021).

But on the other hand, for example in the corruption case with the suspect Wahyu Setiawan, the Justice Collaborator's request was rejected by the KPK (Kabar.24, 2021). Likewise, the corruption case by the suspect Musa Zainuddin was also rejected by the KPK (Kompas.com, 2021). On the other hand, there are cases of corruption which the suspect/defendant actually obtained Justice Collaborator status from the Panel of Judges who examined the case, for example in the cases of Dermawan Ginting (Former Judge of the Medan Administrative Court), Amir Fauzi (Former Judge of the Medan Administrative Court), and Dada Rosada (Former Mayor of Bandung) (Constitutional Court Decision, 2018).

The regulation of Justice Collaborators in Indonesia is still vacuum of law, criminal law reform or new rules regarding Justice Collaborators really need to be considered by the legislative body in Indonesia (Firman Wijaya, 2012). Based on the role of Justice Collaborator is very important for disclosing criminal cases in Indonesia. In this case, corruption cases are currently very common and very concerning, because corruption is a crime that causes losses to state finances which of course the effect will be felt indirectly to the public or people of Indonesia. Thus all efforts to disclose every corruption case in Indonesia must involve the role of the Justice Collaborator whose security and contribution of course deserve more attention (.Lies Sulistiani, 2012).

Thus, this is the background of the author in this research. The problems in this research are: How is the determination of justice collaborator in Indonesia? And how is the disparity in determining justice collaborators in Indonesia? In this study, the authors objectively describe regarding the determination of Justice Collaborator status against perpetrators of corruption. This research is normative research with the author arranged descriptively through a qualitative approach.

**DISCUSSION**

1. **Legal Provisions for Determination of Justice Collaborators in Indonesia**

The role of the Justice Collaborator is someone as a suspect but not the main actor and dismantle the people involved in the case. Even though justice collaborator was corrupt, he also received leniency because he helped in a process of uncovering facts and justice (River Yohanes Manalu, 2015). Justice Collaborator is a suspect whose position as a witness related to corruption which aims to reveal a comprehensive corruption crime. Explicitly, Justice Collaborator is basically not regulated in the Criminal Procedure Code (KUHAP) / Corruption Law even not found in other laws and regulations. The term Justice Collaborator became popular in the practice of criminal law enforcement then began regulated in Indonesian positive law through the ratification of laws from international documents such as (Ayu Diah Pradnya Swari P.J, Ni Nengah Adiyaryani, 2018):

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| **No.** | **Regulation** | **Description** |
| 1. | UNCAC was ratified in Law no. 7 of 2006 concerning the United Nations Convention Against Corruption | The instruments in this ratified law are the background for the emergence of the term Justice Collaborator in the criminal justice system in Indonesia, especially corruption. Arrangements relating to Justice Collaborator is in Article 37 paragraph (2) and paragraph (3) of UNCAC 2003. In this article substantially does not mention the term Justice Collaborator, but in the sound of the article has provided a definition of protection to Justice Collaborator. |
| 2 | *United Nations Convention Against Transnational Organized Crime* (UNCTOC) was ratified into Law no. 5 of 2009 concerning the United Nations Convention Against Transnational Organized Crime | Article 26 paragraph (2) and paragraph (3) of this convention provide definitions relating to the term Justice Collaborator. Not much different from the UN Convention against corruption, this convention provides an overview of Justice Collaborators who deserve legal protection, if the testimony and information they provide affect investigations and prosecutions in corruption cases so that they find the main actors. |
| 3. | Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims | The law on the protection of sanctions and victims explicitly does not provide a clear definition and regulation regarding the meaning and terms of the Justice Collaborator. The law on the protection of sanctions and victims only regulates witnesses and reporters of criminal acts. In this Law, the rules related to Justice Collaborator are regulated in Article 10 paragraph (2) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims which provides a definition that a witness as also a suspect in a similar case cannot be acquitted of criminal prosecution if it is legally and convincingly proven guilty. However, his testimony can be used as a judge's consideration in mitigating the sentence. The formulation of the article contains the meaning and understanding of the term Justice Collaborator. |
| 4 | Government Regulation No. 99 of 2012 concerning the Second Amendment to Government Regulation No. 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates. | This Government Regulation does not clearly state the term Justice Collaborator. In this government regulation, it is stated that remission will be given to convicts in corruption cases if they are willing to cooperate with law enforcers to help uncover criminal cases they have committed. If examined more deeply the notion of Justice Collaborator is not a convict, but a suspect who does not yet have a legal decision that can be categorized as a Justice Collaborator. If the court's decision has been legally binding, sentencing has been carried out, the perpetrator does not apply as a Justice Collaborator, and in the future he assists the law enforcement process then he cannot be said to be a Justice Collaborator. But he is entitled to grant remission in accordance with Article 34 of the Regulation Government No. 99 of 2012. |
| 5. | SEMA No.4 of 2011 | Justice Collaborator in SEMA No. 4 of 2011 is regulated in number 9 regarding guidelines for determining someone who can be said as Justice Collaborator. SEMA No. 4 of 2011 is not a binding legal force as a reference or part of legislation. It’s nature is only a guideline for law enforcers in terms of determining or qualifying a person to become a Justice Collaborator. |
| 6. | Joint Regulation of Law Enforcement Officials and LPSK concerning Protection for Reporting Whistleblowers, Reporting Witnesses and Collaborating Perpetrators. | The regulation relating to Justice Collaborator in this joint regulation is not much different from SEMA No. 4 of 2011. In the joint regulation, the term Justice Collaborator is regulated in Article 1 number (3) which provides an understanding or definition of sanctions for collaborating actors (Justice Collaborator). This joint regulation is also not included in the statutory hierarchy, its nature is only limited to arrangements and guidelines in proceedings, especially regarding the new term, namely Justice Collaborator. |

Of all these regulations, only Law no. 31 of 2014 which has regulated the Justice Collaborator and its protection (Zhulfiana Pratiwi Hafid, 2019). SEMA No. 4 of 2011 aims to convey all judges who are under the ranks of the Supreme Court of the Republic of Indonesia regarding how to handle and to deal with a Justice Collaborator in a trial (Irwan Adi Cahyadi, 2014). The important role of a Justice Collaborator to complete the criminal justice system is also equipped with a joint regulation of law enforcement officials with LPSK which principally aims to create cooperation and synergy between law enforcers in dealing with organized crime, especially corruption through efforts to dig up information and testimony from a cooperating witness (Justice Collaborator) (Ayu Diah Pradnya Swari P.J, Ni Nengah Adiyaryani, 2018).

The regulation of Justice Collaborators in Indonesia is still experiencing vacuum of law, criminal law reform or new rules regarding Justice Collaborators is very necessary for legislative institutions in Indonesia to think about (Firman Wijaya, 2012). The role of the Justice Collaborator is very important for disclosing criminal cases in Indonesia. In this case, corruption cases are currently happening are very common and very concerning, because corruption is a crime that causes losses to state finances which of course the effect will be felt indirectly to the public and people of Indonesia (Raymel B. Kaseger, 2017). Thus, all efforts to disclose every corruption case in Indonesia must involve the role of the Justice Collaborator whose security and contribution certainly deserves more attention.

1. **Disparities in the Determination of Justice Collaborators in Indonesia**

The use of Justice Collaborators in criminal justice is one form of extraordinary effort that can be used to eradicate corruption (Laura Naomi Rotua Gultom, 2020). Definition of Justice Collaborator according to SEMA No. 4 of 2011 namely someone who is one of the perpetrators of a crime, admits the his committed crime, not the main actor in the crime, and provides testimony as a witness in a very significant judicial process (Coby E. Mamahit, 2016). So that it can reveal the crime in question effectively, uncover other actors who have a bigger role and return the assets/proceeds of a crime (Febriansyah, 2011). As for the disparity or difference in perspective between law enforcement officers on the requirements in determining status as a justice collaborator, it can be seen in the case with the defendant Abdul Khoir.

The defendant Abdul Khoir is in the bribery case for the PUPR Ministry's infrastructure project in Maluku. The Corruption Eradication Commission (KPK) prosecutor initially demanded that the defendant be sentenced to 2 years and 6 months in prison, but the panel of judges instead imposed a sentence against the defendant beyond the prosecutor's demands, namely 4 years in prison. Investigators have designated the defendant Abdul Khoir as a Justice Collaborator with the number: KEP-577/01-55/05/2016 dated May 16, 2016 and the public prosecutor in his claim has also requested that the determination of the Justice Collaborator be considered by the panel of judges as a mitigating factor for the sentence of defendant.

From this case, it can be seen that the authority of the Corruption Eradication Commission to determine the perpetrator as a justice collaborator is not strong enough, because the final decision rests with the judge on the outcome of the trial. Eventhough the perpetrator has provided information and willing to cooperate with the KPK to uncover the network of other perpetrators. The authority of the KPK in determining justice collaborators is the attribution authority from Article 15 of Law no. 19/2019 in conjunction with Law No. 30/2002. This authority in normative formulation uses the word 'mandatory'. It means that in the interest of a disclosure of a corruption case, the KPK is obliged to provide the requested protection. However, because of the mandate of Article 1 point 4 of Law no. 19/2019 which emphasizes a series of actions in the context of eradicating corruption must be in accordance with laws and regulations. It also means that the KPK in making decisions is limited by the requirements that have been confirmed in the legislation.

This fairly severe verdict against Abdul Khoir shows that there are differences in perspectives between law enforcement officers on the requirements in determining the status and protection as a Justice Collaborator. In the context of this case, it is between the investigator, the public prosecutor and the judge in determining whether a person is categorized as a Justice Collaborator or not. Although in general the provisions regarding Justice Collaborators have been regulated in the Law on the Protection of Witnesses and Victims, in particular each institution turns out to have different terms and treatment for a Justice Collaborator.

The authority of the decision regarding the perpetrator as a justice collaborator by the KPK in the end still boils down to the judge as the case breaker in the SEMA RI Regulation No. 4 of 2011 concerning the Treatment of Criminal Whistleblowers and Witnesses of Co-operating Perpetrators (Justice Collaborators) in Certain Criminal Cases. Even the judge can decide the perpetrator as a justice collaborator even though the KPK investigators do not propose/stipulate in the investigation and prosecution process. To become a Justice Collaborator at the KPK, the witness of the perpetrator must meet the requirements, among others, admit his crime, return assets or proceeds of corruption to the state, willingness to expose the perpetrator or other cases, and willingness to testify at trial and be consistent with the minutes of examination (BAP).

While the panel of judges adhered to SEMA Number 04 of 2011, there are several guidelines for determining someone as a Justice Collaborator, namely one of the perpetrators of a certain crime, admitting the crime he committed, not the main actor in the crime, and providing information as a witness in the judicial process. For judges, the main actor is not worthy of being a Justice Collaborator, but in the context of this case the judge considers the defendant to be the main actor in the crime.

The form of protection provided by the KPK to Justice Collaborators includes physical and legal protection. Physical protection includes monitoring and escorting, reimbursement of living expenses and transfer to a "safe house". The legal protections provided include obtaining legal counsel, receiving information on case developments and waivers of lawsuits, as well as recommendations for obtaining remissions and parole. Meanwhile, the reward that can be given by the judge to the Justice Collaborator is to impose a special conditional probation sentence or to impose a sentence in the form of the lightest prison sentence among other defendants who are proven guilty in that case.

With the difference in assessment, the researcher considers that it will be a bad impact, because there will be a reluctance for the perpetrators to cooperate in dismantling the network of corruption cases, because they consider that there is no appreciation for the status of Justice Collaborator given by investigators and public prosecutors. This is because in determining a perpetrator as a collaborating actor (Justice Collaborator), the KPK has sought to be selective by referring to the perpetrators who have collaborated in uncovering cases involving them. By providing significant evidence, and returned the money from corruption, so that The KPK can ensnare other perpetrators who are involved in the corruption.

The disparity of views between judges and other law enforcers, including the KPK, is one of the inhibiting factors in the implementation of providing protection for Justice Collaborators so far. Another obstacle encountered is when the protected Justice Collaborator is then reported to law enforcement officials, for example in cases of letter falsification, false statements, or defamation. Not a few Justice Collaborators also experienced threats or disturbances to the safety of themselves and their families.

It is appropriate to find a way out of these inhibiting factors so that Justice Collaborators will not give up or regret for helping law enforcers resolve corruption cases. Without maximum protection or reward, including a reduced sentence, the witness will think again if he is offered or proposed status as a Justice Collaborator. In fact, so far the role of Justice Collaborator is very significant in overcoming the difficulties of law enforcement in uncovering perpetrators or high-profile corruption cases.

**CONCLUSIONS**

The regulation of justice collaborator in corruption crime in the criminal justice system in Indonesia has so far been contained in legal regulations: Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption 2003; Law Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime; Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims; Circular Letter of the Supreme Court Number 4 of 2011 concerning Treatment of Whistleblowers and Judicial Collaborators in Certain Criminal Acts. The disparity in the determination of justice collaborators in one of the Indonesia corruption cases shows that there are obstacles in the implementation of providing protection for Justice Collaborators so far. In addition, this disparity also has an impact on the reluctance of perpetrators to cooperate in dismantling the network of corruption cases, because they consider that there is no appreciation for the status of Justice Collaborator given by investigators and public prosecutors.

**RECOMMENDATION**

The rejection in determining of Justice Collaborator status in the Abdul Khoir case should be a momentum for law enforcers to evaluate the provision of protection to Justice Collaborators. In order to equalize perceptions, strengthen coordination and overcome technical barriers between law enforcement. It is advisable to draw up a joint regulation between the Witness and Victim Protection Agency, the Supreme Court, the Indonesian National Police, the Attorney General's Office, the Ministry of Law and Human Rights, and the KPK regarding the implementation of protection for Justice Collaborators. In addition, it is necessary to build a joint commitment between agencies and law enforcement. So that, in the future, Justice Collaborators are truly protected and the efforts to disclose corruption cases can be completed to the fullest.

As one of the spearheads of law enforcement against corruption, the Corruption Eradication Commission should be given the authority to establish a binding Justice Collaborator as a mutually beneficial cooperation agreement in disclosing corruption cases which in fact the perpetrators have an important role in disclosing corruption. This is because the speed of following up on information from collaborating actors will determine the success of disclosing corruption and the need for firmness and commitment to legal protection for collaborating actors.

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