



APPLICATION OF JUSTICE COLLABORATOR IN EVIDENCE OF CRIMINAL ACTS IN INDONESIA

Mhd.Ihwanuddin Hasibuan¹, Rico Nur Ilham²

¹Student at Master of Law Program Faculty of Law Universitas Pemabngunan Panca Budi

²Student at Master of Law Program Faculty of Law Universitas Pemabngunan Panca Budi
and

²Lecturer at Faculty of Economic and Business Universitas Malikussaleh

Corresponding Email: mhdihwanuddin07@gmail.com

Abstract

In various countries, the application of Justice Collaborators varies, the application of Justice Collaborators was first recognized in Italy, at that time a member of the Italian mafia Joseph Valachi was tested for crimes committed by his group, then followed by America and Australia legally protection. Meanwhile, in Indonesia, arrangements regarding new Justice Collaborators are regulated in joint regulations with law enforcement officials as well as a circular letter from the Supreme Court. In giving testimony, in general, Justice Collaborators were motivated by a reduced term of detention or from their heart the intention to repent. However, in testimony, sometimes a Justice Collaborator is harassed or hindered by a fellow member who commits a crime, and this is what every country in the world needs to regulate so that the dismantling of a crime case can run optimally. In responding to Corruption cases, countries in the world have responded with various regulations so that they can create a deterrent effect for the perpetrators of these crimes, regarding the Justice Collaborator rules they have included in their country's laws. However, in Indonesia, the rules regarding witnesses, perpetrators and reporters are only regulated in the Supreme Court Circular Number 04 of 2011 and regulations with law enforcement officials and the Witness and Victim Protection Agency (LPSK). It is fitting that the rules regarding the protection of reporting witnesses and collaborating witness witnesses be included in the laws of our country, so that the courageous mentality of the witnesses can continue.

Keywords: *Evidence, Justice Collaborator, Crime*

1. INTRODUCTION

A Justice Collaborator is someone who is a suspect in a crime but is not the main actor and can dismantle the people involved in it. In this case, even if someone has participated in or committed another crime, he will also receive relief because he has assisted in a process of dismantling facts and justice. In this scientific work, the author discusses the application of Justice Collaborators in proving criminal acts in Indonesia. Law Number 13 of 2006 concerning the Protection of Witnesses and Victims does not provide a definition of reporters either in their position as Justice Collaborators, however, this lack of understanding does not eliminate the rights that must be given to them and must be fulfilled by the Witness Victim Protection Agency (LPSK).). Because, Justice

Collaborators are equally considered as witnesses when reporting a criminal 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 crime and he himself reports the case to law enforcement officials occurs in several possibilities such as, as a person participating with other people commit a crime, a person who commits a crime at the suggestion of a person and a person who helps other people commit a crime.

A Justice Collaborator who reports the crime case is a person who has courage and a strong mentality. Therefore, this person basically already knows the bad things that will happen to them because of the report, such as being threatened, intimidated, persecuted, dishonorably discharged from office or even killed. The presence of the Victim Witness Protection Agency (LPSK) has an important and strategic role so that the courage and strong mentality will continue until the person gives information or testimony during investigations or even at trial in cases related to criminal acts. In other words, the Witness Protection Agency (LPSK) is required to fulfill a number of human rights owned by a Justice Collaborator, including the right to obtain protection for the personal safety of their family and property, and to be free from threats regarding reports, testimony, which will be and has been given, the right to give information without pressure, get a new identity, get a new place of residence, obtain reimbursement of transportation costs as needed, and obtain legal advice. Although in some cases there were also Justice Collaborators who dared to expose a problem related to corruption, for example Muhammad Nasaruddin who dragged youth and sports ministers Andi Malarangeng and Anas Urbaningrum as heads of the Democratic party, in the Hambalang project and Wisma Atlit.

What Nasaruddin has done should indeed be appreciated so that state losses due to corruption can be reduced, and returned to the state. And all of this is also not spared from the role of the Corruption Eradication Commission (KPK), as well as other related officials, in supporting the dismantling of facts and justice. The hope for this nation in the future is to be free from corruption so that Indonesia can become a prosperous and sovereign country and firm in law enforcement. In several cases, Justice Collaborators often become victims because of certain things, maybe because of their position, or maybe



they are afraid of their superiors who should be held responsible for this, or they have been threatened for certain reasons so they don't drag the people involved over it.¹

In the case of implementing this Justice Collaborator, it is likely that there will be a reduction in criminal acts in Indonesia. And convicts who participate in committing crimes together will be more courageous in providing valid information during investigations so that the case can be resolved properly, quickly and thoroughly in accordance with applicable procedures. Related to the problems that occur or this event, the researcher of this scientific work can give the title Application of Justice Collaborators in Proving Criminal Acts in Indonesia, the author of this scientific paper hopes that later if someone commits a crime it can be dismantled and investigated thoroughly, fast and implement efficiency in law enforcement.

2. RESEARCH METHODS

Understanding the research method is the initial step that is owned and carried out by researchers in order to collect information or data and conduct investigations on the data that has been obtained. The research method provides an overview of the research design which includes the procedures and steps that must be taken, the time of the research, the source of the data, and by what steps the data were obtained and then processed and analyzed.²

The method in this research, because the discussion is related to law, the researcher will put forward the notion of the legal method conveyed by Radhi's understanding regarding the legal method, which places more emphasis on the workings of legal research and the theoretical use of legal research, namely to develop the principles of legal science.³ From the opinions above regarding legal research, researchers can conclude that the legal method is a method or activity in conducting research related to the topic we are discussing so that it will lead to development related to principles in developing knowledge related to legal science.

¹<https://lk2fhui.law.ui.ac.id/penerapan-justice-collaborator-dalam-perkara-tindak-pidana-korupsi-di-indonesia/> accessed on Monday, 6/02/2023 at 10:00 WIB

²<https://www.statistikian.com/2017/02/metode-penelitian-metodologi-penelitian.html> accessed on Monday, 6/02/2023 at 10:30 WIB

³<http://meaningaccordingtoexperts.blogspot.com/2017/04/pengertian-dan-juang-metode-penelitian.html> accessed on Monday, 6/02/2023 at 11:00 WIB

The type of research used in this study is normative juridical. According to Soerjono Soekanto, a normative juridical approach is legal research conducted by examining library research or secondary data as the basic material for research by conducting a search of regulations and literature. literature related to the problem under study.⁴This approach is used by researchers because in this scientific work the author refers to laws and regulations, legal phenomena and norms that exist in society itself.

3. RESEARCH RESULTS AND DISCUSSION

a. The Legal Basis Governing About Justice Collaborators

Legal Basis for Justice Collaborators Based on Circular Letter (SE) of the Chief Justice of the Supreme Court Number 04 of 2011 the legal basis for justice collaborators is regulated in national and international law. Some of them are:

- 1) Law (UU) Number 7 of 2006 which ratified the 2003 UN Anti-Corruption Convention
- 2) Law Number 5 of 2009 which ratified the United Nations Convention Against Organized Transactional Crime; Article 10 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims
- 3) Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006. Justice collaborators do receive legal protection, but cannot be released from criminal charges if proven guilty. However, according to Article 10 of Law Number 13 of 2006 the testimony of justice collaborators can be considered by the judge to relieve the crime.

b. Requirements for Determining Actors for Justice Collaborators

Referring to the Circular Letter of the Chief Justice of the Supreme Court Number 04 of 2011 there are guidelines in determining a person as a witness who is willing to cooperate (justice collaborator). The guideline stipulates the following conditions:

- 1) The person concerned is the perpetrator of a crime who admits his crime and is not the main actor in the crime.
- 2) The person concerned gave testimony as a witness in the judicial process.

⁴Soerjono Soekanto and Sri Mamudji, Normative Legal Research (A Brief Review), (Jakarta: Rajawali Pers, 2001), h. 13.



- 3) The public prosecutor (JPU) stated that the person concerned had provided significant information and evidence so that investigators and/or public prosecutors could uncover the crime in question effectively, as well as uncover other actors who had a bigger role in the crime.
- 4) The perpetrator witness can get relief from the judge for his assistance, which can be in the form of imposing a special conditional probation sentence and/or imposing the lightest prison sentence among other defendants who are proven guilty. The judge must consider the sense of justice of the community in granting relief to the perpetrator witness. When distributing cases, the head of the court gave the cases revealed by the witnesses to the same panel as far as possible. The chairman of the court should also give priority to other cases revealed by witnesses who cooperate.⁵

4. Application of Justice Collaborators in Proving Corruption Crimes

a. Definition of Corruption

According to the legal view, the definition of corruption has been explained in 13 articles in Law Number 31 of 1999 which have been amended by Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption. Based on these articles, corruption is formulated into 30 forms/types of corruption. These articles explain in detail the actions that can be subject to criminal sanctions due to corruption. The 30 forms or types of corruption can basically be grouped as follows:

- a) State financial losses
- b) Bribes
- c) Embezzlement in office
- d) Extortion
- e) Cheating
- f) Conflict of interest in procurement
- g) Gratification

⁵<https://tirto.id/apa-itu-justice-collaborator-ini-arti-fundamental-hukum-conditions-guTN> accessed on Monday, 6/02/2023 at 12:30 WIB

In addition to the forms or types of corruption described above, there are other criminal acts related to corruption as stipulated in Law Number 31 of 1999 jo. Law Number 20 of 2001. The types of criminal acts related to corruption are as follows:

- 1) Obstructing the process of examining corruption cases
- 2) Do not provide information or provide incorrect information
- 3) Banks that do not provide information about the suspect's account
- 4) Witnesses or experts who do not provide information or provide false information
- 5) The person who holds office secrets does not provide information or provide false information
- 6) Witness who reveals the identity of the complainant
- 7) The following articles below can be associated with criminal acts of corruption in the procurement of government goods and services.⁶

The formulation of corruption in Article 2 of Law Number 31 of 1999 was first contained in Article 1 paragraph (1) letter a of Law no. 3 of 1971. The difference in the formulation lies in the inclusion of the word "may" before the element "harmful to the country's finances or economy" in Law Number 31 of 1999. Until now, this article has been used most frequently to convict corruptors.

In order to conclude whether an act is considered corruption according to this Article, the following elements must be met:

1. Any person or corporation against the law
2. Enrich yourself, other people or a corporation
3. Can be detrimental to state finances or the country's economy.

b. Proof System in Corruption Crimes

If the positive law provisions stipulated in Law no. 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption Crimes. So the provisions regarding proving corruption cases are contained in Article 12B paragraph (1) letters a and b, Article 37, Article 37 A and Article 38B.

According to Lilik Mulyadi, if one looks closely, the Corruption Crime Law classifies evidence into 3 (three) systems:

⁶<https://www.kppu.go.id/docs/Artikel/Seminar%20PBJ.pdf> accessed on Monday, 6/02/2023 at 12:45 WIB



- 1) Reversal of the burden of proof is borne by the accused to prove he did not commit a criminal act of corruption. This reversal of the burden of proof applies to the crime of bribery receiving gratuities whose value is Rp. 10,000,000.00 (ten million rupiah) or more (Article 12B paragraph (1) letter a) and for property that has not been charged that has anything to do with the criminal act of corruption (Article 38B). If following the polarization of the thinking of lawmakers as legislative policies, there are some strict restrictions on the application of reversing the burden of proof associated with fair rewards for officials. This aspect-oriented limitation is only applied to gifts (gratifications) in bribery offenses, the gift is in the amount of Rp. 10,000,000.00 (Ten Million Rupiah) or more,
- 2) Reversal of the burden of proof which is semi-reversed or reverse-balanced in which the burden of proof is placed on both the defendant and the public prosecutor (JPU) in a balanced manner against different objects of proof in contrast (Article 37A).
- 3) The conventional system in which proving corruption and the guilt of the accused in committing corruption is fully borne by the Public Prosecutor (JPU). This aspect is carried out against the crime of bribery receiving gratuities whose value is less than Rp. 10,000,000.00 (Ten Million rupiah) in (Article 12B paragraph (1) letter b) and the main corruption crime.

Based on SEMA Number 4 of 2011 concerning Whistleblowers and Justice Collaborators for certain cases, namely: Terrorism, Narcotics, Corruption, money laundering crimes, gross human rights violations, and trafficking, have been discussed on p. 166. Whereas HM Akil Mochtar (MK Judge) that: The reversal of the burden of proof is limited and balanced (balanced burden of proof) as in Law Number 31 of 1999 concerning Corruption Crimes contains 2 things as follows:

1. It is limited that the reversal of the burden of proof cannot be carried out totally or absolutely in all offenses in this Law.
2. Meanwhile, the term "balanced" means that the proof of the alleged corruption crime is still being carried out by the Public Prosecutor (JPU).

According to Lilik Mulyadi said that: The Indonesian Criminal Law System, especially regarding the burden of proof in criminal acts of corruption, normatively recognizes the principle of reversing the burden of proof aimed at people's mistakes (Article 12 B paragraph (1), Article 37 of Law Number 31 of 1999 in conjunction with Law Number 20 2001) and ownership of the assets of the perpetrators of corruption (Article 37A, Article 38B of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001).

In Law Number 20 of 2001, reversing the burden of proof, explicitly the provisions of Article 12B of the Law in full read as follows:

1. Any gratification given to a civil servant or state administrator is considered a bribe if it is related to his position and is contrary to his obligations or duties, with the following conditions:
 - a. Which is worth Rp. 10,000,000.00 (ten million rupiah) or more, proof that the gratuity is not a bribe is carried out by the recipient of the gratuity.
 - b. Those whose value is less than Rp. 10,000,000.00 (ten million rupiah), proof that the bribery was committed by the public prosecutor.
2. The punishment for civil servants or state administrators as referred to in paragraph (1) is life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years, and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).⁷

According to Romli Atmasasmita that: the existence of reversing the burden of proof from the perspective of legislation policy is known in corruption crimes as provisions that are "premium remidium" and at the same time contain special prevention. The crime of corruption as an extra ordinary crime that requires extraordinary enforcement and extra ordinary measures, the crucial aspect in cases of corruption is the effort to fulfill the burden of proof in the process carried out by law enforcement officials.

Based on the description above, it can be seen from a philosophical perspective that legislative policies implement the existence of a reversal of the burden of proof in

⁷Alfitra, *The Law of Proof in Criminal, Civil and Corruption Procedures in Indonesia*, (Jakarta: Achieve the Principles of Success), 2017, page, 145.



corruption crimes because law enforcers (police, prosecutors and judges) experience difficulties in applying the Indonesian criminal law system to prove the appropriation of perpetrators' assets. (offender) if done by using negative proof theory.

Therefore, an extraordinary juridical aspect is needed and with extraordinary legal instruments in the form of a system of reversing the burden of proof but still upholding the principle of the presumption of innocence while still paying attention to human rights (HAM), and in the application of the evidentiary system.⁸

c. Application of Justice Collaborators in Proving Corruption Crimes

The process of proving corruption can be carried out well if all systems run according to the SOP. This is where the role of law enforcement is to eradicate corruption. Furthermore, if law enforcement is weak, there are several obstacles or obstacles faced in eradicating corruption, including:

- a. There is involvement of law enforcers in finding evidence for prosecution, this is due to the lack of witnesses who can reveal a criminal act of corruption.
- b. In implementing witness protection against criminal acts of corruption, knowledge must be obtained from witness and victim protection institutions.
- c. The defense of the accused in a trial is usually included in a pledoi which will be responded to by the public prosecutor in a Duplik Replik so that it will take a long time to be processed at trial.

Therefore, law enforcers need special legal education concerning criminal law material and litigation practices in court. Thus, fundamental reforms are needed in accordance with the needs and development of society and development. Legal research, both its activities and socialization, is still very limited. This aspect of legal education and research greatly supports the improvement of the quality of human resources for law enforcement officials. This must develop dynamically along with the development of science and technology, bearing in mind that the crime of corruption develops with the times. Thus, legal professional organizations, both practitioners and academics, have so far not shown activities that can support law enforcement activities against criminal acts of

⁸http://www.pnlhoksukon.go.id/media/files/20170417150853209334910258f4781588e77_20170419145829_Teori+dan+Hukum+Evidence.pdf accessed on Monday, 6/02/2023 at 10:50 WIB

corruption, which do not yet reflect legal professional organizations that can be relied upon in legal development because there are still many legal professions who do not understand such as several corruption cases handled by the District Court. Furthermore, the work orientation of the bureaucracy, which has always been known as Paradigm still occurs frequently and colors the working mechanism of the bureaucracy. The report, which is oriented to you being happy, is still ongoing and is still adhered to in the existing bureaucratic working mechanisms. The tendency to report to superiors is not in accordance with what actually has to be reported or is not realistic.⁹

Of the various cases concerning the application of Justice Collaborators in Indonesia, this strongly refers to the perpetrators of these Justice Collaborators being able to dismantle or properly report the criminal acts they committed honestly. So the effectiveness of the application of Justice Collaborator in proving criminal acts in Indonesia will be faster and better resolved in these cases. This means that a Justice Collaborator plays a very important role in resolving cases that are being processed by legal prosecutors, the most important thing to know is the effectiveness of the application of a Justice Collaborator in proving criminal acts in Indonesia as follows:

1. Perpetrators of criminal acts must be aware and willing to report related to the crimes they have committed
2. The perpetrator must be willing to be a witness in court and willing to provide truthful information to the court while the trial process continues.
3. Justice Collaborators must be protected by law so that things that worry them do not occur in the family of a Justice Collaborator and all their rights must be legally protected
4. Law enforcers in Indonesia should ask questions and provide opportunities for perpetrators of criminal acts to be able to become witnesses in uncovering the true facts so that the settlement of criminal acts goes well.

⁹<https://pasca-umi.ac.id/index.php/jlg/article/view/883/951> accessed on Monday, 6/02/2023 at 13:00



5. CONCLUSION

A Justice Collaborator is someone who is a suspect in a crime but is not the main actor and can uncover people involved in criminal acts. In this case, even if someone has participated in or committed another crime, he will also receive relief because he has assisted in a process of dismantling facts and justice. The legal basis governing the Justice Collaborator namely based on Circular Letter (SE) of the Chief Justice of the Supreme Court Number 04 of 2011 the legal basis for justice collaborators is regulated in national and international law. Some of them are as follows:

- Law (UU) Number 7 of 2006 which ratified the 2003 UN Anti-Corruption Convention
- Law Number 5 of 2009 which ratified the United Nations Convention Against Organized Transactional Crime; Article 10 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims
- Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006. Justice collaborators do receive legal protection, but cannot be released from criminal charges if proven guilty. However, according to Article 10 of Law Number 13 of 2006 the testimony of justice collaborators can be considered by the judge to relieve the crime.

The application of Justice Collaborators in Proving Corruption Crimes is as follows

- Perpetrators of criminal acts must be aware and willing to report the related crimes they have committed
- The perpetrator must be willing to be a witness in court and be willing to provide true information during a series of investigative processes at the police.
 - Justice Collaborators must be legally protected so that bad things don't happen that could threaten their existence, causing anxiety in the Justice Collaborator's family.
 - Law enforcers in Indonesia must at least inquire and provide criminal offenders with the opportunity to become Justice Collaborators in the settlement of criminal acts.

6. SUGGESTION

Based on the discussion and research results on the Application of Justice Collaborators in Proving Corruption Crimes, several conclusions are drawn. anyone except the party with authority against those who run justice collaborators.

Second, based on the application of the Justice Collaborator in proving the Corruption Crime, it must be carried out and there must be no flaws in the evidence that is done so that the application of the Justice Collaborator is not wrong and the person involved by the Justice Collaborator dismantles and proves the crime that actually occurred without any lies. what he said.

Third, in order to optimize law enforcement in the field of corruption, the granting of justice collaborator status must be binding on all law enforcement apparatus in Indonesia, starting from the level of investigation, prosecution, to the level of justice, for this reason the granting of justice collaborator status should not only be in the form of SEMA or joint regulations, but must be in the form of a government regulation, or if considered very important, may be in the form of a law.



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