



CRIMINAL LAW ARRANGEMENTS AGAINST JUSTICE COLLABORATORS IN CORRUPTION CRIMES IN INDONESIA

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ABSTRACT

In various countries, the form of legal protection for Justice Collaborators and Westleblowers is different. Legal protection for Justice Collaborators was first known in Italy, at that time a member of the Italian mafia, Joseph Valachi, testified about the crimes committed by his group, then followed in America and Australia with legal protection. Meanwhile, in Indonesia, regulations regarding the actions of a Justice Collaborator or Westleblower are regulated in joint regulations with law enforcement officials and circulars from the Supreme Court. In giving testimony, Justice Collaborators are generally motivated by reducing their prison term or from their heart they really want to repent. However, in testimony, sometimes a Justice Collaborator is disturbed or obstructed by fellow colleagues who have committed a crime, and this is something that needs to be regulated by every country in the world so that the dismantling of a criminal case can run optimally. In responding to corruption cases, countries in the world have responded with various regulations so that they can have a deterrent effect on perpetrators of these crimes, they have also included regulations regarding Westleblowers and Justice Collaborators in their country's laws. However, in Indonesia the rules regarding witnesses, perpetrators and reporters are only regulated in the 2011 Supreme Court circular and joint regulations with law enforcement officials and the LPSK. It is appropriate that regulations regarding protection for reporting witnesses and cooperating perpetrator witnesses be included in our country's laws, so that the brave mentality of these witnesses can continue.

Keywords: Justice Collaborator, Corruption Crime

A. INTRODUCTION

The establishment of the Corruption Eradication Commission (KPK) is a mandate from Article 43 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts Corruption (KPK), which is independent, has the task and authority to eradicate criminal acts of corruption. The Corruption Eradication Commission has a vision to create an Indonesia free from corruption and a mission to drive change to create an anti-corruption nation.

In the criminal act of gratification there are two parties who both play an active role in realizing the criminal act of gratification perfectly, namely the giver and the recipient of the gratification. The giver of gratification is regulated in the provisions of Article 5 and the recipient is regulated in Article 12B. However, with the provisions of Article 12C, namely when the recipient of the gratification reports the gratification to the Corruption Eradication Commission within 30 days, the legal provisions of Article 12B paragraph (1) do not apply. If this is looked at carefully, it will create injustice for the recipient and giver of gratification. Aristotle stated that justice must be based on law, that is, a person gets rights or shares proportionally considering education, position and ability. Justice in the context of corruption that is demanded is not equality but balance. Likewise if we look at the responsibility for the crime of gratification.

The role of Justice Collaborator is someone who is a suspect but not the main perpetrator and can expose the people involved above him. In this case, even though he was corrupt, he also received relief because he had helped in the process of uncovering facts and

justice. In this thesis the author will discuss the role and actions taken by the Justice Collaborator which can help the Investigator as well as other reasons which can relieve him. Law Number 13 of 2006 concerning Protection of Witnesses and Victims does not provide a definition of whistleblowers, whether their position is as a Westleblower or Justice Collaborator, however, this lack of understanding does not eliminate the rights that must be given to them and must be fulfilled by the LPSK. Because, both Westleblower and Justice Collaborator are considered witnesses when reporting a corruption case. The concept of Justice Collaborator is essentially the same as the concept of the offense of participation in the provisions of articles 55 and 56 of the Criminal Code, where a person's involvement in a corruption case and he himself reports the case to law enforcement officials occurs in several possibilities, such as, as a person who participates with other people. committing corruption, people who commit corruption on the advice of other people and people who help other people commit corruption.

A Justice Collaborator and Westleblower who reports corruption cases is a person who has courage and is mentally strong. Because, basically, these people already know about the bad things that happened to them because of the report, such as being threatened, intimidated, persecuted, dishonorably dismissed from their position or even killed. 3 The presence of LPSK has an important and strategic role in order to increase courage and mental health. This strength continues until the person gives information or testimony in an investigation or even at a trial in a corruption case.

In other words, LPSK is required to fulfill a number of human rights that a Westleblower or Justice Collaborator has, including the right to obtain protection for the personal security of his family and property, as well as to be free from threats relating to reports, testimony, which will be, is being and he has been given the right to provide information without pressure, obtain a new identity, obtain a new place of residence, obtain changes in transportation costs according to needs, and obtain legal advice. Although in several cases, Justice Collaborators often become victims due to certain reasons, it could be because position, or perhaps he is afraid of his superiors who should be responsible for this, or they have been threatened for some reason, so as not to drag the people involved above him.

However, in several cases there are also Justice Collaborators who dare to expose problems related 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 Atlit house. What Nasaruddin has done deserves to be appreciated so that state losses due to criminal acts of corruption can be reduced and returned to the state. And all of this also does not escape the role of the Corruption Eradication Commission (KPK), as well as other related authorities, in supporting the uncovering of facts and justice. The hope for the future of this nation is to be free from corruption so that Indonesia can become a prosperous and sovereign country that is firm in law enforcement.

B. FORMULATION OF THE PROBLEM

1. What are the criminal law regulations for Justice Collaborators in Corruption Crimes in Indonesia?
2. What are the obstacles to Justice Collaborators when giving testimony in Corruption Crime cases?

C. RESEARCH METHODS

The method used in writing this thesis is a normative juridical approach based on current facts and examples. so that it can be described systematically, collecting legal materials according to writing requirements, namely as follows:

1. Primary legal materials: Legislation.
2. Secondary legal materials: Literature, scientific legal works, library materials, as well as other sources from relevant government agencies, the internet, and so on.

D. DISCUSSION

1. Criminal Law Regulations for Justice Collaborators in Corruption Crimes in Indonesia

The regulation of Justice Collaborators in the criminal justice system in Indonesia is something new when compared to the legal practice that occurs in the Criminal Procedure Code (KUHAP). The Law on the Eradication of Corruption Crimes and other laws and regulations do not explicitly regulate Justice Collaborators in criminal justice, or in other words the term Justice Collaborator was first known in the practice of criminal law enforcement and then received attention and then began to be regulated in law, positive in Indonesia. The current criminal law policies both originating from international and national documents that provide regulations relating to the Justice Collaborator include:

a. United Nations Convention Against Corruption/UNCAC (Law Number 7 of 2006 concerning the UN Convention Against Corruption)

This instrument is the legal basis behind the birth of the idea of Justice Collaborator in criminal justice. Arrangements relating to Justice Collaborators in criminal justice are regulated in article 37 as follows:

Paragraph (2): each participating country is obliged to consider providing the possibility in certain cases of reducing the sentence of an offender who provides substantial cooperation in the investigation or prosecution of a crime to which this convention applies.

Paragraph (3): every country is obliged to consider the possibility in accordance with the basic principles of its national law of granting immunity from prosecution to persons who provide substantial cooperation in the investigation or prosecution of a criminal offense stipulated in this convention.

The President of Indonesia signed a binding agreement on this convention in 2006, to date 80% of the rules contained in UNCAC have been implemented in Indonesia and may reach 90% so that the eradication of corruption involving perpetrator witnesses can run optimally. In essence, the main objective of UNCAC is to improve and strengthening the prevention and action of corruption to make it more effective and efficient as well as increasing and encouraging international cooperation and technical assistance for the prevention and action of corruption and improving integrity, accountability and government management.

b. United Nations Convention Against Transnational Organized Crime/UNCATOC (Law number 5 of 2009 concerning the UN Convention Against Transnational Organized Crime)

The aim of making this convention by countries in the world is to ensure cooperation between countries. Because transnational organized crime can threaten economic, social, political life, security and world peace. Likewise with the UN anti-corruption convention, this convention also provides regulatory ideas relating to Justice Collaborators in criminal justice, namely regulated in article 26 as follows:

Paragraph (2): Each state party shall consider opening the possibility, in appropriate circumstances, of reducing the sentence of an accused who provides significant cooperation in the investigation or prosecution of a criminal offense covered by this convention.

Paragraph (3): Each state party is obliged to consider opening the possibility, in accordance with the basic principles of its national law, of granting immunity from prosecution to a person who provides significant cooperation in the investigation or prosecution of criminal offenses covered by this convention.

And also the most important point in this convention is contained in article 12 paragraph 1 concerning confiscation and confiscation of criminal assets which, among other things, explains: States parties are obliged to take, as far as possible in their national legal system, measures deemed necessary to enable the confiscation of :

- 1) Proceeds of criminal acts originating from criminal acts covered by this convention or assets whose value is equal to the proceeds of such criminal acts.

- 2) Property, equipment or other means used or intended to be used in criminal offenses covered by this convention.

In this way, state losses resulting from criminal acts of corruption can be minimized or even completely restored, so that the country can progress and develop. Apart from that, paragraph 2 also emphasizes, among other things: Each party state is obliged to take measures deemed necessary to enable the identification, tracking, freezing or confiscation of any goods referred to in paragraph 1 of this article for the ultimate purpose of confiscation.

c. Law Number 13 of 2006 concerning Protection of Witnesses and Victims

This law was created in order to foster public participation in uncovering criminal acts. It is necessary to create a conducive climate by providing legal protection and security to everyone who knows or discovers something that can help uncover criminal acts that have occurred and report this to law enforcer.

Such reporters must be given adequate legal protection and security for their reports. So that he does not feel threatened or intimidated, both his rights and his life, with the guarantee of legal protection and security, it is hoped that a situation will be created that will enable the public to no longer feel afraid to report a criminal act that they know about to law enforcement. With the promulgation of this regulation, it is hoped that Justice Collaborators will be helped, which states "A witness who is also a suspect in the same case cannot be released from criminal charges if it turns out that he is legally and convincingly proven guilty, but his testimony can be taken into consideration by the judge in mitigating the sentence to be imposed." ". Thus, in order to create justice and equal standing in the eyes of the law, even though a Justice Collaborator has assisted the authorities and returned assets resulting from certain criminal acts such as corruption, money laundering, etc., he will still serve a period of detention.

d. Supreme Court Circular Letter Number 4 of 2011 Concerning the Treatment of Criminal Whistleblowers and Perpetrator Witnesses Who Cooperate in Certain Criminal Cases

In appreciating the reporter and perpetrator witness, the supreme court issued this letter to protect the rights relating to protection for those who assist in the judicial process, in paragraph 1 of this letter, among others:

- 1) Certain serious criminal acts, such as corruption, terrorism, narcotics crimes, money laundering, human trafficking and other organized crimes, have created serious problems and threats to the stabilization and security of society, thereby undermining institutions and values. -the values of democracy, ethics and justice and endanger sustainable development and the supremacy of the law.

In paragraph 1, it is clear that Justice Collaborators who are involved in criminal acts of corruption deserve to be protected by law, then paragraph 2 also makes it clear which, among other things, contains:

- 2) In an effort to foster public participation in order to reveal criminal acts as referred to in point one above, a conducive climate must be created, among other things, by providing legal protection and special treatment to everyone who knows, reports, and/or discovers something that can help enforcement officials. law to uncover and handle the crime in question effectively.

e. Joint Regulations for Law Enforcement Officials and LPSK Concerning Protection for Whistleblowers, Reporting Witnesses and Cooperating Perpetrator Witnesses.

This joint regulation is intended to equalize views and perceptions as well as facilitate the implementation of the duties of law enforcement officers in uncovering serious and/or organized criminal acts and provide guidelines for law enforcers in carrying out coordination and cooperation in the field of providing protection for

reporters, reporting witnesses and perpetrator witnesses. cooperate in criminal cases. Meanwhile, the aim of this joint regulation is to create cooperation and synergy between law enforcement officials in handling serious and organized criminal acts through efforts to obtain information from the public who are willing to become reporters, reporting witnesses and/or perpetrator witnesses who cooperate in criminal cases, creating a sense of security. both from physical and psychological techniques and giving awards to members of the public who know about the occurrence or impending occurrence of a serious criminal act and/or are organized to report or provide information to law enforcement officials, reveal the criminal act and assist in the return of assets resulting from criminal acts in an orderly manner. effective (Corruption Crime).

The regulations relating to Justice Collaborators are regulated in Article 1 as follows, point (3): Collaborating perpetrator witnesses are witnesses who are also perpetrators of a criminal act who are willing to help law enforcement officials to uncover a criminal act or the impending occurrence of a criminal act in order to obtain compensation. assets or proceeds of a criminal act to the state by providing information to law enforcement officials, as well as providing testimony in the judicial process. Thus, the rules regarding the actions and treatment of Justice Collaborators need to be considered more deeply, so that someone involved, whether a Whistleblower or Justice Collaborator, or even police officers, can work more freely and better in dismantling organized crime. Therefore, the legal regulations regarding Whistleblowers and Justice Collaborators need to be re-arranged, considering that SEMA and joint regulations are not yet widely binding. It would be good for the government to make a law which contains new rules about things they must do, solutions for their protection, as well as rewards for those who reveal a crime that occurred.

2. Obstacles to Justice Collaborators when Giving Testimony in Corruption Crime Cases

As previously discussed, the legal basis for obstacles to the judicial process for criminal acts of corruption in Indonesia is article 21 of Law number 31 of 1999 concerning criminal acts of corruption, and article 25 of Law number 7 of 2006, concerning ratification of the United Nations convention against corruption. Also, criminal law experts have formulated obstruction of the judicial process in the draft Criminal Law Code (RUU-KUHP), 2008. These provisions are regulated in Chapter VI concerning 'Criminal acts against the judicial process', especially the section the second is about 'obstructing the judicial process'. These provisions are as follows; Article 329, (1) is punishable by a maximum imprisonment of 7 (seven) years and a maximum fine of category IV for anyone who violates the law:

- 1) By using violence or threats of violence or by intimidating investigators, investigators, public prosecutors, advocates and/or judges so that the judicial process is disrupted;
- 2) Submitting false evidence or influencing witnesses in giving testimony in court; or 3) Prevent, obstruct or thwart directly or indirectly the process of investigation, prosecution and examination in court.

Article 330, (1) Any person who:

- 1) Hiding people who have committed criminal acts or people who have been charged with committing criminal acts;
- 2) Providing assistance to persons as intended in letter a to avoid investigation or detention by officials authorized to carry out investigation or detention; or
- 3) After a criminal act has occurred, with the intention of covering up or obstructing or complicating the investigation or prosecution, destroying, eliminating, hiding objects that were targets or means of committing a criminal act or traces of other criminal acts or withdrawing them from inspections carried out by officials authorized to carry out investigations or prosecutions.

(2) The provisions as referred to in paragraph (1) do not apply if the act is carried out with the intention of avoiding prosecution against blood relatives or blood relatives in the second degree straight line or in the third degree sideways line or against the wife or husband or ex-wife or husband.

Article 331, every person who prevents, obstructs or thwarts the examination of a corpse for the purposes of justice, shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of category II.

Article 332, every person who releases or provides assistance when someone escapes from detention carried out on the orders of an official authorized to carry out detention or escapes from the crime of deprivation of liberty based on a judge's decision, shall be punished with imprisonment for a maximum of 3 (three) years or a fine. at most category IV.

Article 333, every person who unlawfully does not appear when summoned as a witness, expert or interpreter, or does not fulfill an obligation that must be fulfilled in accordance with the provisions of the applicable laws and regulations, shall be punished by:

- 1) A maximum prison sentence of 1 (one) year or a maximum fine of category II, for criminal cases; or
- 2) The maximum fine is category II, for other cases.

Article 334, (1) Any person who:

- 1) Releasing goods from confiscation based on statutory regulations or from savings on the order of a judge or hiding the goods, even though it is known that the goods are in confiscation or storage; or
- 2) Destroying, damaging or rendering unusable an item confiscated based on the provisions of applicable laws and regulations.
 - (2) Stores of goods who carry out, allow to be carried out, or assist in carrying out acts as intended in paragraph (1), shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of category IV.
 - (3) If the act as intended in paragraph (2) occurs due to the depositor's negligence, then the perpetrator of the criminal act shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of category II.

Article 335, every person who, based on the provisions of the applicable laws and regulations, must provide information on oath or such information gives rise to legal consequences, provides false information on oath, either verbally or in writing, by himself or by his attorney specifically appointed for that purpose who is given during the examination of a case at a court hearing and causing harm to the opposing party, the perpetrator of the criminal act shall be punished with imprisonment for a maximum of 10 (ten) years or a fine of up to category V.

Article 336, every witness and other person related to criminal acts of terrorism, corruption, human rights, or money laundering who mentions the name or address of the reporter or other things that make it possible for the identity of the reporter to be known during the investigation and examination at trial the court shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of category II.

However, in the development of criminal law, the concept of Restorative Justice is now known, which can be used as a companion to the principles of equality before the law and non-impunity. The concept of restorative justice states that not everyone should be treated the same because there are things that differentiate that person from other people, so that because of these differences a person may not be punished as long as they are responsible for recovering the losses they cause.

In this case, the concept of restorative justice is very appropriate to be applied to protect Justice Collaborators with the following arguments.

- a. The concept of Restorative Justice is based on the principle of inequality as justice. The contribution made by the Justice Collaborator in uncovering this corruption case is

used as the basis for differentiating it from ordinary contributions. Thus, his contribution became the basis for preventing him from being punished.

- b. The concept of Restorative Justice will have a positive effect on society where parties who have the potential to become Justice Collaborators will no longer be afraid to make disclosures and in this way, corruption cases will be revealed in massive numbers.

Based on the thoughts above, the concept of restorative justice, which aims to restore the losses suffered by victims, is very appropriate to be applied to Justice Collaborators, because:

- a. Justice Collaborator has helped uncover the corruption cases he committed. The report is a huge contribution in helping efforts to eradicate corruption.
- b. Removing the prosecution of the Justice Collaborator will cause the parties to reveal the corruption case they committed.

Thus, corruption cases will be uncovered on a massive and significant scale. In this case, the responsibilities of the Justice Collaborator consist of:

- a. Responsibility to return corrupted state money.
- b. Exposing the corruption cases he reported down to their roots. This concept is an effort to recover losses suffered by the state due to corruption.

The Justice Collaborator's responsibility in terms of restoring state losses is what replaces the Justice Collaborator's punishment. In various types of crimes that occur, the people involved in them or their families often make various efforts to have the punishment reduced, including obstruction of justice. In fact, the most important element in a corruption case is the perpetrator's witness because they are the people involved and know about the origin of the corrupted money and where it flows. because corruption is a crime that is very difficult to prove, therefore a perpetrator witness or Justice Collaborator must be armed with various kinds of protection because he is the person who has various important pieces of evidence so that the judicial process can run well and correctly.

E. CLOSING

1. Criminal Law Regulations for Justice Collaborators in Corruption Crimes in Indonesia. The current criminal law policies both originating from international and national documents that provide regulations relating to the Justice Collaborator include:
 - a. United Nations Convention Against Corruption/UNCAC (Law Number 7 of 2006 concerning the UN Convention Against Corruption).
 - b. United Nations Convention Against Transnational Organized Crime/UNCATOC (Law number 5 of 2009 concerning the UN Convention Against Transnational Organized Crime).
 - c. Law Number 13 of 2006 concerning Protection of Witnesses and Victims.
 - d. Supreme Court Circular Letter Number 4 of 2011 Concerning the Treatment of Criminal Whistleblowers and Perpetrator Witnesses Who Cooperate in Certain Criminal Cases
 - e. Joint Regulations for Law Enforcement Officials and LPSK Concerning Protection for Whistleblowers, Reporting Witnesses and Cooperating Perpetrator Witnesses.
2. Barriers to Justice Collaborators when Giving Testimony in Corruption Crime Cases. Even though Justice Collaborators are threatened individuals, their protection in Indonesia does not yet meet international standards based on the discussion in chapter III, so it needs to be re-arranged. Moreover, if he is involved in a criminal act of corruption where this act generally involves many people and officials, those who are named by the Justice Collaborator and who are involved in it will certainly have feelings of revenge, the more he mentions, the more enemies a Justice Collaborator will have. If we compare the treatment of Justice Collaborators in various countries, we will be able to conclude that Justice Collaborators are parties who assist in dismantling facts and justice. And after we look at

the current criminal law policy towards Justice Collaborators, we can also understand the things that apply to Justice Collaborators at this time.

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