



## Legal protection for justice collaborators for corruption in the perspective of human rights

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### Abstract

Legal protection is a service form provided by the government to provide a sense of security to every citizen. In criminal acts of corruption, legal protection for Justice Collaborators must ensure safety or justice in applicable laws such as the right to provide certain social, economic, political, class, racial, or gender positions. If legal protection for Justice Collaborators in Indonesia has not shown maximum efforts, then law enforcement officers should support it as described in the Circular Letter of the Supreme Court Number 4 of 2011 concerning Treatment for Whistleblowers and Justice Collaborators in Criminal Acts. In certain regulations, both Whistleblowers and Justice Collaborators must prioritize their primary rights in obtaining security and safety. The type of research used in this research is normative juridical research. In this study, the law is considered as what is written in legislation or the law is considered a norm or rule that forms the basis of human behavior which is considered correct. Normative juridical research is a process to find the rule of law, legal principles, and legal doctrines to answer legal issues faced by the author, so that new arguments, theories, or concepts can be obtained to solve a problem.

**Keywords:** human rights, justice, legal protection

### Introduction

Corruption is a serious problem experienced by the Indonesian people because corruption tends to occur in all fields and sectors of people's lives. Various ways are pursued by the government to suppress the number of corruption, one of them being through the perpetrator's witness (Justice Collaborator) <sup>[1]</sup>. This breakthrough is considered to assist law enforcement authorities in disclosing corruption cases that occur in a systematic and organized manner. The perpetrator's witness (Justice Collaborator) has a strategic role in providing important information and information in identifying the main actors. <sup>[2]</sup> However, the legal protection for the perpetrator's witness (Justice Collaborator) still encounters several obstacles in its application.

Justice Collaborator (JC) is an understanding for criminals who participate in crimes, but this person also helps to notify law enforcement by providing information about the crime. The person also helps to uncover a crime in a criminal act. The crime committed by a person is the same as a form of participation crime, where the crime committed is a criminal act of corruption, but they report to law enforcement, there are several reasons, namely someone who participates in committing a criminal act of corruption and who the second is that the person is asked to participate and commits another person to participate in the corruption crime <sup>[3]</sup>.

Legal protection is a service form provided by the government to provide a sense of security to every citizen <sup>[4]</sup>. In terms of providing this protection, the wider community views that it is time for witnesses and victims to be given protection in the justice system <sup>[5]</sup>.

A Justice Collaborator has several advantages such as imposing special conditional probation, granting remission and assimilation, parole, imposing the lightest sentence among other defendants found guilty, special treatment, and so on. The emergence of the existence of JC is based on

several provisions in the 2003 United Nations Convention Against Corruption (UNCAC) preamble which has been ratified by Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003 (UN Convention Against Corruption, 2003), which emphasizes that Corruption as an extraordinary crime must be fought because it has a massive impact on the life of the country. So the eradication must be carried out particularly.

In recent developments in Indonesia, starting from the importance of having a witness as well as an actor who is expected to assist in the disclosure of corruption by law enforcement and also as demand for legal certainty for those who act as witnesses and also perpetrators, the Supreme Court (MA) based on its authority issued a circular letter, which aims to equalize the views of the institutions involved in the criminal justice process, especially those related to corruption. This is important considering the lack of regulation regarding the presence of a witness and also an actor, which is a new phenomenon in the legal world, the Supreme Court's move has provided an answer to the existence of a legal vacuum and information related to witnesses and also as perpetrators even though their existence is seen as very important because their testimony is a testimony from a perpetrator who was also involved in a crime that was initially very secretive and complicated by law enforcement. In the circular letter, it has also provided unequivocal limits in determining who can be called a witness taken from the perpetrators of a crime so that it is not easy for someone to apply or claim the status as a witness to the perpetrators only because of the various protections and awards provided. offered the status of a witness and also as an actor who wants to cooperate with law enforcement officials to uncover corruption.

In the applicable positive law, legal protection in Indonesia for Justice Collaborators has not yet received full support. It can be seen from the fact that the Justice Collaborator's life

is not guaranteed after the case takes place or after the case is closed. Legal protection has been regulated in the regulations but is unable to provide complete protection for Justice Collaborators. For example, the family or people closest to Justice Collaborator often receive death threats. Convicted in the bribery case Damayanti Wisnu Putranti, who was selected as a Justice Collaborator in uncovering the bribery case for road construction tenders in Maluku. He mentioned that his son had wanted to be kidnapped and even got terrorized <sup>[6]</sup>. This description explains how essential the role of the Justice Collaborator is in revealing material truth. Because of this position, Justice Collaborators tend to be attached to potential threats. Meanwhile, the current positive law has not provided entire legal protection for Justice Collaborators for corruption crimes <sup>[7]</sup>.

According to Philipus M. Hadjon, legal protection is a collection of rules or rules that will protect one thing from another <sup>[8]</sup>. The connection with the Justice Collaborator is that human rights must be fulfilled, including proportional legal protection <sup>[9]</sup>. From this explanation, the author understands that positive law at this time needs to be studied, with other perspectives that support legal protection for Justice Collaborators, so that in the future many people want to cooperate in uncovering corruption.

From the perspective of human rights, the primary right for humans to live from birth is necessary, because it is considered a gift by the Almighty that needs to be protected by oneself, the community, and the government <sup>[10]</sup>. Therefore, because of human rights against Justice Collaborators whose lives are usually threatened, it is deemed necessary to provide adequate legal protection by the state.

Justice Collaborator is an “important tool in fighting organized crime” because the working methods in the existing criminal law system show weaknesses because they are often not able to uncover, fight, and eradicate various organized crimes. In the practice of justice, law enforcement officers often encounter various juridical and non-juridical obstacles to fully reveal and find clarity of a criminal act, especially presenting key witnesses in the legal process from the investigation to the court process <sup>[11]</sup>.

The importance of legal protection for Justice Collaborators as described above, the author is interested in taking the title in writing this law, namely Legal Protection for Justice Collaborators for Corruption in the Perspective of Human Rights.

### Research Method

The type of research used in this research is normative juridical research. In this study, the law is considered as what is written in legislation or the law is considered a norm or rule that forms the basis of human behavior which is considered correct. Normative juridical research is a process to find the rule of law, legal principles, and legal doctrines to answer legal issues faced by the author, so that new arguments, theories, or concepts can be obtained to solve a problem. This normative juridical research examines positive legal norms related to the 1945 Constitution of the Republic of Indonesia, Law Number 31 of 2014 concerning Witness and Victim Protection Institutions, and a Circular Letter of the Supreme Court Number 4 of 2011 concerning the Treatment of Whistleblowers. and Witness Actors who Cooperate (Justice Collaborators) in Certain Cases. The

approach used is the statutory approach, and the conceptual approach is the statutory approach. The method of data collection with the literature study is to collect legal materials related to the issues raised.

### Research Result

#### 1. Legal Protection for Witness Justice Collaborator for Corruption in the Perspective of Human Rights

Article 1 paragraph 1 of Law Number 39 of 1999 concerning Human Rights states that basically, human rights are fundamental, namely by upholding the principle of protection to create justice for all Indonesian people.

In corrupt criminal acts, legal protection for Justice Collaborators must ensure safety or justice in applicable laws such as the right to provide certain social, economic, political, class, racial, or gender positions <sup>[12]</sup>. If these rights are violated, the Justice Collaborator's legal protection is still not said to be maximal. An example is Mrs. Damayanti Wisnu Putranti who was threatened when she was a Justice Collaborator, proving that the protection of Justice Collaborators had not been implemented properly <sup>[13]</sup>.

In the view of human rights, this has violated the norms of justice because the person concerned feels intimidated it can cause psychological trauma. In Indonesia, corruption is classified as an extraordinary crime, which requires extraordinary methods to deal with it. Here the role of the witness for the Justice Collaborator is considered strategic and closely related to threats because corruption tends to be carried out by people who have high intelligence in structured and organized crime networks <sup>[14]</sup>.

The Witness and Victim Protection Agency (LPSK), the only institution authorized and responsible for the legal protection of the Justice Collaborator, is considered not to have provided maximum legal protection, even though the Justice Collaborator's legal protection has regulated in Law Number 31 of 2014 concerning Witness Protection Institutions and Victims <sup>[15]</sup>. Human rights in Indonesia cannot be separated from the concept of the rule of law, guided by the 1945 Constitution of the Republic of Indonesia as the constitution and legal basis of a country <sup>[16]</sup>. Several things must be emphasized in a constitution, one of which is the guarantee of the protection of human rights and citizens. The existence of the 1945 Constitution of the Republic of Indonesia is a legal form that can accommodate human rights in detail and make them an integral and constitutionally protected part <sup>[17]</sup>. Therefore, a country based on law is required to protect all levels of society fairly and wisely. Every citizen has the right to receive equal protection and treatment in various aspects of their life, including Justice Collaborators who are dealing with criminal acts of corruption.

Indonesia, as a state of law, highly upholds human rights. In this case, it is embodied in the 1945 Constitution of the Republic of Indonesia and emphasized in Law Number 39 of 1999 concerning Human Rights. Indonesia recognizes that all living human beings are entitled to the protection of their rights, without exception. If legal protection for Justice Collaborators in Indonesia has not shown maximum efforts, then law enforcement officers should support it as described in the Circular Letter of the Supreme Court Number 4 of 2011 concerning Treatment for Whistleblowers and Justice Collaborators in Criminal Acts. In specific regulations, both Whistleblowers and Justice Collaborators must prioritize their basic rights in obtaining security and safety.

## 2. Legal protection arrangements for Justice Collaborators in Corruption Crimes in Indonesia

The regulation of Justice Collaborator in criminal justice in Indonesia can be considered new when compared to the legal practice that occurs in the Criminal Procedure Code. The legislation does not explicitly regulate Justice Collaborator. The term Justice Collaborator became popular in the practice of criminal law enforcement and then began to be regulated in Indonesian positive law through the ratification of laws originating from international documents such as:

a. United Nations Convention Against Corruption (UNCAC) which was ratified into 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 which in Article 37 paragraph (2) and paragraph (3) United Nations Convention Against Corruption (UNCAC) 2003 which reads:

“Article 37. Cooperation with Law Enforcement Officials.  
2. Each State Party shall consider providing for the possibility, in appropriate cases, of reducing the sentence for an accused who can cooperate substantially in the investigation or prosecution of an offense established by this Convention. 3. Each State Party shall consider providing the possibility, by basic principles of its domestic law, of granting immunity from prosecution to defendants capable of cooperating substantially in the investigation or prosecution of offenses established by this Convention.”

This article does not substantially mention the term Justice Collaborator, but in the sound of the article it has provided a definition of protection against Justice Collaborator.

b. United Nations Convention Against Transnational Organized Crime (UNCATOC) which 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. it has an effect on investigations and prosecutions in corruption cases so as to find the main actors.

c. 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 who is also a suspect in a case similar cases cannot be acquitted of criminal charges if they are legally and convincingly proven guilty, but their testimony can be taken into consideration by the judge in mitigating the sentence to be imposed. The formulation of the article contains the meaning and understanding of the term Justice Collaborator.

Article 10 A of the Witness and Victim Protection Law can be explained by the perpetrator's witness involved in the awarding of special treatment and commutation of sentences as part of legal protection and criminal law policies against Justice Collaborators to tackle the crime of corruption. The regulation of criminal law in response to new terms that appear in the criminal justice system such as the term Justice Collaborator plays a role in dismantling cases of corruption that organized criminal acts by collaborating with perpetrators of corruption crimes to provide information and testimonies that are known to uncover more criminal acts of corruption.

d. Government Regulation No. 99 of 2012 concerning the Second Amendment to Government Regulation No. 32 of 1999 discussing the 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 of corruption cases if they are willing to cooperate with law enforcers to help dismantle criminal cases they have committed. If examined more deeply the notion of a Justice Collaborator is not a prisoner, but a suspect who does not have a legal decision yet who can be categorized as a Justice Collaborator. Collaborator, and in the future he helps the law enforcement process so he cannot be said to be a Justice Collaborator but is entitled to grant remissions by Article 34 of Government Regulation No. 99 of 2012.

e. Supreme Court Circular No. 4 of 2011 concerning the Treatment of Criminal Whistleblowers (Whistleblowers) and Witnesses of Collaborating Perpetrators (Justice Collaborators) in Certain Criminal Acts (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 or has the status of a Justice Collaborator. SEMA No. 4 of 2011 is not a binding legal force as a reference or part of the legislation, its nature is only a guideline for law enforcers in terms of determining or qualifying a person to become a Justice Collaborator.

f. Joint Regulation of Law Enforcement Apparatus and LPSK concerning Protection for Reporting Reporters, 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 point (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.

In the whole arrangement regarding the Justice Collaborator, only Law no. 31 of 2014 has regulated the Justice Collaborator and its protection. SEMA No. 4 of 2011 only aims to convey to all judges under the ranks of the Supreme Court of the Republic of Indonesia how to handle and deal with a Justice Collaborator in a trial. The important role of the Justice Collaborator is not only to complete the criminal justice system but also to equip with joint regulations with 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 someone. Witness of the working perpetrator (Justice Collaborator).

In general, related to protection there are four forms of protection for those who are categorized as witnesses and also as perpetrators:<sup>[18]</sup>

- a. Protection against physical and psychological;
- b. Special Handling;
- c. Legal protection, and
- d. Award

According to Article 1 paragraph 3 of the 1945 Constitution, it is stated that the state of Indonesia is a state of law. Therefore, the state has a responsibility to protect the human rights of every citizen. Legal protection for Justice Collaborator must be broad and complete, both at the trial stage and after the judicial process is completed. The number of threats that will come from parties or individuals who feel aggrieved if the Justice Collaborator uncovers a criminal act can endanger the Justice Collaborator and his family. The form of legal protection that applies in Indonesia has 4 (four) forms, namely:

#### **a. Physical and psychological protection**

Physical and psychological protection does not only apply to personal security in the form of protection from all threats, terror, violence, pressure, and disturbance to self, life, and property of any party, but also guarantees protection for families from Justice Collaborators<sup>[19]</sup>. It is also explained that based on Article 5 paragraph 1 of the LPSK Law which regulates the rights of Justice Collaborators, it explains that Justice Collaborators are entitled to physical and psychological protection in the form of protection for their personal, family, and property security, as well as being free from threats related to testimonies that will, are being, or has been granted and participate in the process of selecting and determining the form of security protection and support.

The mechanism for providing physical and psychological protection for Justice Collaborators proposed by Abdul Haris Samendawai is the provision of protection provided by LPSK on the initiative of requesting protection that can be submitted from Justice Collaborators of other law enforcement agencies after the Attorney General or the KPK has determined the person as a Justice Collaborator. A suspect or defendant cannot submit a request for protection to LPSK to check the fulfillment of all requirements later, LPSK has obliged either alone or with the support of other parties, and is obliged to provide physical and non-physical protection to the Justice Collaborator.

#### **b. Special Handling**

Supporting efforts to provide security protection for Justice Collaborators who provide information in the judicial process, will be given special handling. Specific handling is regulated in the Joint Regulation of the Minister of Law and Human Rights, Attorney General, Chief of Police of the Republic of Indonesia Number: m.hh-11.hm.03.02.th.2011, Number: per-045/a/ja/12/2011, Number: 1 of 2011, Number kep-02/0155/12/2011, Number: 4 of 2011 concerning Protection for Whistleblowers, Reporting Witnesses and Collaborating Perpetrators. Providing protection in the form

of placing a detention room that is different from other perpetrators in the case he revealed, LPSK coordinates with the party running the institution that has the authority to handle detention.

#### **c. Legal protection**

Protection of Justice Collaborators is contained in Article 10 and Article 10A of the PSK Law. Legal Protection for Justice Collaborators in Article 10 can be concluded that Justice Collaborators as long as they provide information that will be, are being, or have been given based on good faith, the Justice Collaborators cannot be prosecuted either criminally or civilly. Good faith explains that a person who provides a report and/or information to law enforcement officers is solely based on the desire to uncover a criminal act.[20] If there is a demand that the public prosecutor must postpone until the case information is given has obtained permanent legal force so that the Justice Collaborator will continue to focus on providing information to uncover the facts of the occurrence of a criminal act and preventive steps in the efforts of certain parties to hinder the process of examining the case to be dismantled.

#### **d. Award**

The awarding of justice collaborators is very important for efforts to create a conducive atmosphere for the disclosure of corruption in the context of community involvement. The award deserves delivered to the Justice Collaborator as a sign that the person concerned has contributed to law enforcement efforts, it is hoped that other perpetrators of corruption can also assist law enforcement officers in helping to uncover other corruption crimes.

Protection in the form of giving awards to Justice Collaborators can be in the form of leniency in criminal penalties through LPSK providing written recommendations to the public prosecutor so that warnings for imposing criminal penalties are included in their demands.

The award is established in a contract between the prosecutor and the Justice Collaborator. In terms of protecting the form of awards for Justice Collaborators in Corruption Crimes, it is technically carried out by the provisions of the Joint Regulations as follows:

The application is submitted by the perpetrator himself to the Attorney General or the leadership of the KPK, LPSK can submit a recommendation to the witness of the perpetrator who cooperates to be considered by the Attorney General or the Chairperson of the KPK. The KPK leadership decides to give or reject the award by applicable regulations<sup>[21]</sup>.

Specifically, in awarding awards to Justice Collaborators in the form of remissions and pardons, the role of the Attorney General or the Chair of the KPK considers the Minister of Law and Human Rights and the President. The award given to the Justice Collaborator is the domain of the Corruption Court of Justice. Therefore, the Chief Justice of the Supreme Court of the Republic of Indonesia issued SEMA No. 11 of 2004 concerning the Treatment of Whistleblowers and Judicial Collaborators in Certain Criminal Cases.

#### **Conclusion**

1. Legal Protection for Witness Justice Collaborator for Corruption in the Perspective of Human Rights  
Legal protection for Justice Collaborators in Indonesia, in this case, the author specializes in the discussion of



Justice Collaborators on Corruption Crimes, has not shown maximum efforts, so law enforcement officials should support it as described in the Circular Letter of the Supreme Court Number 4 of 2011 concerning Treatment of Whistleblowers. Criminal Acts (Whistleblower) and Justice Collaborator In certain crimes, in the rules both Whistleblowers and Justice Collaborators, must prioritize their basic rights in obtaining security and safety.

2. Legal protection arrangements for Justice Collaborators in Corruption Crimes in Indonesia  
In particular, legal protection for Justice collaborators in criminal acts of corruption is regulated in the following regulations:
  - a. United Nations Convention Against Corruption (UNCAC) which was ratified into Law no. 7 of 2006 concerning the United Nations Convention Against Corruption.
  - b. The United Nations Convention Against Transnational Organized Crime (UNCATOC) which was ratified into Law no. 5 of 2009 concerning the United Nations Convention Against Transnational Organized Crime.
  - c. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims
  - d. Government Regulation No. 99 of 2012 concerning the Second Amendment to Government Regulation No. 32 of 1999 discussing the Terms and Procedures for the Implementation of the Rights of Correctional Inmates
  - e. Supreme Court Circular No. 4 of 2011 concerning the Treatment of Criminal Whistleblowers (Whistleblowers) and Witnesses of Collaborating Perpetrators (Justice Collaborators) in Certain Criminal Acts (SEMA No. 4 of 2011)
  - f. Joint Regulation of Law Enforcement Officials and LPSK concerning Protection for Reporting Whistleblowers, Reporting Witnesses and Collaborating Perpetrators.

In general, related to protection, there are four forms of protection for those who are categorized as witnesses and also as perpetrators:

- a. Protection against physical and psychological;
- b. Special Handling;
- c. Legal protection, and
- d. Award.

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