Justice Collaborator Implementation with Law Effectively Approaches in Indonesia

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<td>Received: 2023-11-12</td>
<td>This research aims to determine the application of justice collaborators using a legal effectiveness approach in Indonesia. Furthermore, this article uses a normative method with library data sources and relevant regulatory legal documents. The findings in this research are that justice collaborators have experienced problems regarding legal protection for justice collaborators and the determination of justice collaborators. Justice collaborators have many weaknesses in the legal system, and the determination of justice collaborators, and many experts think that the law on justice collaborators and the determination of justice collaborators need to create new rules that can reach their domain to achieve effectiveness, so justice should be done. Collaborators must have a clear legal domain in terms of determination, protection, and other facilities, where the role of justice collaborators is to help law enforcement officials investigate the main perpetrators in corruption cases where the justice collaborators will receive threats that endanger their lives.</td>
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<td>Revised: 2024-02-21</td>
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Keywords: Justice Collaborator; Corruption; Effectivity; Indonesia

I. Introduction

The birth of the justice collaborator law was first introduced in the United States in 1970 (Mulyadi, 2014). Justice Collaborator acts as a suspect who is not the main perpetrator who can reveal the people involved (Mulyadi, 2014). The starting point for the idea of developing justice collaborators is the provisions of the United Nations Convention Against Corruption (UNCAC) Article 37 paragraph (2) of 2003, which has been ratified in Indonesia through Law Number 7 of 2006 (Ariyanti & Ariyani, 2020a). Justice collaborators changed Law Number 31 of 2014 to disclose criminal cases and assist law enforcement officers in searching for evidence and other essential suspects (Korejo et al., 2021).
Legal protection for justice collaborators is contained in Article 10 of Law No. 13 of 2006 and amended into Law Number 31 of 2014 concerning Witness and Victim Protection Institutions and Supreme Court Circular Letter (SEMA) No. 4 of 2011 concerning the Treatment of Criminal Reporters (Maguchu, 2022a), the act of perpetrators collaborating (justice collaborator) (Rotua et al., 2021) begins with an application by the applicant (suspect or defendant) to obtain justice collaborator status, followed by a review of the application, if the conditions are met then the suspect or defendant can be given the status of a judge. Collaborators (Semendawai, 2017).

Provisions regarding Justice Collaborators have yet to be explicitly regulated and firmly in statutory regulations. This problem is one of the areas for improvement in providing legal certainty regarding Justice Collaborator. In national law, Justice Collaborators are regulated in several statutory regulations, namely Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims; Supreme Court Circular Letter Number 4 of 2011 concerning Treatment of Criminal Whistleblowers and Justice Collaborators in Certain Criminal Cases; Joint Regulation of the Minister of Law and Human Rights, Attorney General, Chief of Police, Corruption Eradication Commission, Chair of the Witness and Victim Protection Agency Number M.HH-11.HM.03.02.th.2011, Number PER-045/A/JA/12/2011, Number 1 of 2011, Number KEBP-02/01-55/12/2011, Number 4 of 2011 concerning Protection for Whistleblowers, Reporting Witnesses and Collaborating Witnesses of Perpetrators (Kusuma & Adhari, 2021).

The condition of legal protection for justice collaborators is still fragile, so a strategic step is needed to optimize legal protection for justice collaborators (Salen, 2022). In resolving organized cases, it is necessary to have a party who collaborates with law enforcement, namely a Justice Collaborator as a perpetrator of a criminal act who is willing to help or cooperate with law enforcement (Pratama & Apriani, 2022). However, the use of a crown witness (justice collaborator) has conditions that must be met, as well as criminal liability for the crown witness, namely that he can be subject to a type of criminal imposition against him because of the status of the defendant who committed a criminal act of corruption, given special treatment in the examination process and given an award for testimony given (Dewi, 2022).

The Justice Collaborator’s interpretation is based on the Supreme Council Brochure Message No. 4 of 2011 concerning the Treatment of Whistleblowers and Justice Collaborators (Sistem et al., 2022). According to Article 1, paragraph 26 of the Criminal Procedure Code, a witness is a person who can provide information for investigation and prosecution (Amin, 2017). This was made clear in the Supreme Court Circular Letter (SEMA) Number 4 of 2011 concerning the treatment of criminal reporters (Whistleblowers) and Witnesses to perpetrators who work together (Justice Collaborators) in order to address the weaknesses and shortcomings of the law (Mamahit, 2016). Because witness testimony is considered the most crucial piece of evidence in proving a criminal case, this is regulated in Article 184 of the Criminal Procedure Code, which states that valid evidence is Witness statements, expert statements, letters, instructions, and defendant statements (Hafid, 2019a). Therefore, using justice collaborators in criminal justice is essential (Hafid, 2019b).

Justice collaborators are obliged to receive protection because the justice
collaborator's initiative to provide information comes from the perpetrator himself with the awareness of admitting his actions (Yunus, 2017). The essence of Human Rights (HAM) itself is an effort to maintain human safety (Triwahyuningsih, 2018). Therefore, the safety of Justice Collaborators is stated in several articles in the legislation as follows: First, Article 1 Paragraph (2) in conjunction with Article 10, Article 10A of Law Number 31 of 2014 concerning Amendments to Second Law Number 13 of 2006 concerning Witness and Victim Protection (Astri et al., 2021).

Justice collaborators must receive special attention in their development because they are instrumental in helping law enforcers uncover crimes whose proof is difficult (Mahmud et al., 2021). Justice Collaborator plays an essential role in uncovering cases that constitute organized criminal acts. In judicial practice, law enforcement officials often encounter various juridical and non-juridical obstacles in thoroughly uncovering and finding clarity on a criminal act, especially when presenting witnesses who are critical in the legal process from investigation to trial (Muhammad, 2015). The Justice Collaborator is said to have an essential role because it will guide law enforcement officials in uncovering a criminal act or the impending occurrence of a criminal act so that the state can accept the return of assets resulting from the crime, providing information to the law. Law enforcement officers provide testimony in the trial process (Ariyanti & Ariyani, 2020b).

Criminal law allows perpetrators of certain crimes to be witnesses and cooperate with law enforcement in uncovering a criminal case. For his actions, he will be given awards in the form of reduced sentences, conditional release, additional remissions, and other prisoners’ rights by statutory provisions (Kamin et al., 2022). The presence of a Justice Collaborator in a case is expected to help law enforcement officials in their efforts to find out and find the truth and clarity in a criminal act. The concept of a Justice Collaborator in criminal law is a witness who is also a perpetrator in a criminal act who is given special status in the form of preferential treatment due to unavoidable circumstances (Tang, 2021).

Justice collaborator is a breakthrough in Indonesian law that will overcome corruption problems by involving a justice collaborator to provide testimony regarding corruption, which he is also involved in and knows everything about (Bou et al., 2020). However, the protection of Justice collaborators still needs to be improved by statutory regulations where no regulations specifically guide them (Kosanke, 2019). This has given rise to many reports from justice collaborators and obstacles in cooperation between institutions, which still overlap with different understandings; with weak laws, it is feared that it will give rise to organized crime capable of challenging the state with personal goals and profits (Taylor & Bailey, 2009). Therefore, this research provides a breakthrough by comparing justice collaborator law between Indonesia, the United States, and Italy.

Based on the above background, this research aims to analyze the laws governing justice collaborators regarding protection and effectiveness in uncovering corruption cases in Indonesia. Next, the author examines how justice collaborators reveal the occurrence of criminal acts of corruption and how legal protection is for justice collaborators after assisting law enforcement officials in uncovering a corruption case, which to date has become a fascinating study regarding the protection and level of success of justice collaborators in assisting law enforcement officials in uncovering
Indonesian corruption cases.

2. Research Method

The method used is juridical-normative; juridical-normative is a form of scientific research activity that uses library and conceptual materials (Rahmawati, 2020) using primary legal materials and collecting legal materials using document study techniques (Marfuatun, 2018a). Related to justice collaborators and the approach used is the Statutory Approach, namely the approach used to study and analyze all statutory regulations related to the justice collaborator problem that is being handled, and the Conceptual Approach, namely the approach by exploring and understanding theoretical concepts as doctrines that have been developed and recognized by academic experts in the form of legal theory and matters related to the object under study (Marfuatun, 2018b).

![Research Framework Image]

Figure 1. Research Framework

3. Results and Discussion

Justice collaborator protection

The role of a justice collaborator is needed to examine more deeply to uncover the main perpetrators of Indonesian corruption cases. However, not all cases are resolved using justice collaborators. Most Indonesian corruption cases are revealed using more in-depth investigations, do not include justice collaborators, and are practical and accurate according to the target. Therefore, it can be categorized as uncovering corruption cases that do not use a justice collaborator and can be resolved effectively. However, some cases are categorized as significant and are resolved using a justice collaborator, but what we need to know is that a justice collaborator is a person who participates in a corruption case; in other words, a justice collaborator is the perpetrator of a corruption case (Achmad & Taun, 2022).

Uncovering a crime or case that is considered complicated and extensive
requires the people involved to be witnesses who cooperate with law enforcers; this is called a justice collaborator. Meanwhile, the role of collaborating countries and law enforcers needs to pay attention to legal protection for justice collaborators because witnesses perpetrators also help the state's task of eradicating corruption (Purnamawati et al., 2022). With the presence of a crown witness or what is called a justice collaborator who is willing to tell the story of the incident in detail and reliably, it is necessary to create a law that regulates the safety of his life, which in this case has been protected by the victim witness protection agency, but the regulations that there is no accurate regulation. Therefore, the position of judge collaborator needs to be more credible regarding its safety in the long term.

Supreme Court Circular SEMA 4/2011 sets out the basis for determining who is a collaborating judge as follows (Sugiri et al., 2021a).

1. Crimes that must be exposed are serious and organized crimes such as corruption, human rights violations, drugs, terrorism, money laundering, human trafficking, and forestry. Also, they do not recognize justice collaborators in minor crimes.
2. The information shared is significant, relevant, and reliable. This can be a clue for law enforcement to uncover crimes and help their performance. The person who becomes a justice collaborator is not the main perpetrator of the crime because his presence as a justice collaborator aims to reveal the main perpetrator of the crime.
3. He confessed his crimes before the court and was willing to return the property he had damaged.
4. In his complaint, the public prosecutor stated that the party concerned had provided sufficient information and evidence to assist investigators and the public prosecutor in uncovering crimes ineffectively, revealing other perpetrators behind the crime who played a more significant role and returned—any assets they have damaged.

Legal protection for justice collaborators is contained in Article 10 of Law No. 13 of 2006 and amended into Law Number 31 of 2014 concerning Witness. Victim Protection Institutions and Supreme Court Circular Letter (SEMA) No. 4 of 2011 concerning the Treatment of Criminal Whistleblowers (Maguchu, 2022b), protection of justice Collaborators are needed where justice collaborators are the most dangerous people because they are essential in exposing the main perpetrators, even though the regulations have already been regulated, the regulations need to add protection.

Because major corruption cases occurred at the highest levels of government involving many people and constituted organized crime (Sugiri et al., 2021b), the threats he received would also endanger him and his family. Considering the importance of the critical role of a justice collaborator, it must be accompanied by clear legal protection. Legal protection is all protection regulated by statutory regulations and legal certainty. "Protection is a form of service that must be provided by law enforcement officers or security forces to victims and witnesses to provide a sense of
security both physically and mentally from threats (Thalib et al., 2017).

Current Indonesian legal regulations have no clear rules regarding justice collaborators. According to the literature, a justice collaborator is a criminal who passes law enforcement to reveal the crimes they have committed. The term perpetrator witness (witness-perpetrator) is as intended in Article 1 Number (2) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 Concerning Witness Protection (Sugiri et al., 2021b).

Legal certainty is one of the fundamental values of law, so every legal rule must be able to realize this value. Without legal certainty, law enforcement cannot be adequately implemented. According to Jan Michiel Otto, true legal certainty has a more juridical dimension. However, he provides a broader definition of legal certainty, which defines legal certainty as the possibility that in certain situations, namely: (a) Clear rules are available, consistent and easy to obtain (accessible); (b) The ruling agencies (government) apply these legal rules consistently and also submit and obey them. (c) Citizens civilly adapt their behavior to those rules; (d) Independent and impartial judges (judiciary) apply these legal rules consistently when they resolve legal disputes; and (e) Judicial decisions are concretely implemented (Otto, 2006).

Legal uncertainty regarding the criteria for the main perpetrator has implications for the lack of a common understanding between law enforcers regarding the main perpetrator. In essence, legal certainty requires that a rule or norm be enforced as it should. Legal certainty emphasizes the existence of legal, regulatory efforts in legislation made by authorized and authoritative parties so that these regulations have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed. The absence of guidelines for law enforcers has resulted in different interpretations among law enforcers regarding the main perpetrators. Legal uncertainty regarding the criteria for the main perpetrator is one of the factors that can weaken law enforcement in Indonesia (Mahrus Ali, 2023).

The effectiveness of Justis Collaborator Indonesia

In the Netherlands, legal regulations and the implementation of justice collaborators have been carried out in such a way, one of which is the handling of severe crimes and organized crime, which has been regulated and promulgated since 2006, and legislative regulations that specifically regulate the implementation of Agreements Witnesses. In Indonesia, it is better known as Justice Collaborator. It is regulated in Book Two of the Criminal Procedure Code, Title III, Articles 4B 4D, articles 226g-226 (Pujiani, 2022).

The public prosecutor informs the examining judge about the agreement he intends to make with a suspect who is willing to provide witness testimony in a criminal case against another suspect in exchange for the public prosecutor’s promise to demand a reduction in the sentence in his criminal case based on the application of article 44a of the Criminal Code (Ariyanti & Ariyani, 2020b). The agreement relates exclusively to information witnesses provided in the context of criminal investigations of serious criminal acts, as defined in Article 67(1) of the Criminal Procedure Code, which are committed by an organized group and have their interests in mind. The
nature of the relationship with other serious criminal acts the suspect commits constitutes a severe violation of law and order or a serious criminal offense punishable by a minimum of eight years imprisonment. The agreement exclusively concerns reducing the sentence as intended in Article 44a (Nafri & Maisa, 2022).

The policy of handling and giving special treatment to Justice Collaborators and Whistleblowers has been in effect since 2003. However, various problems still face maximum efforts to handle the disclosure of criminal acts that are mainly organized in nature, such as corruption cases (Muhammad, 2015). The existence of Justice Collaborators and Whistleblowers is very strategic in uncovering organized crimes, not infrequently making several countries give awards to those willing to cooperate with law enforcement officials. One aspect of giving this award is to provide leniency to justice collaborators (Diyan Pratama, 2023).

In Indonesia, juridically, there is a space for giving awards to a Justice Collaborator who collaborates with law enforcement officials in revealing intellectual brains or the primary key in organized crime, namely corruption. However, its implementation often results in complicated or inverted conditions (Hikmawati, 2016). Furthermore, this is reflected in the decision involving the former Chair of the Regional Representative Council and Damayanti Wisnu Putranti, a former People’s Representative Council member. In the case involving the two national political figures, the judge, in deciding the case in question, did not differentiate between the main perpetrator and the perpetrator witness who cooperated with law enforcement officials, even though the elements of a person who could be charged against the perpetrator witness who cooperated according to the public prosecutor were already fulfilled (Pertiwi & Rahmad, 2020).

In their decision, the panel of judges sentenced Irman Gusman to 7 (seven) years in prison and Damayanti Wisnu Putranti to 4 (four) years. A new justice collaborator can receive an award by first having to obtain a written recommendation from the Witness and Victim Protection Agency (from now on referred to as LPSK), which will later be given to the law enforcer handling the legal process (Kamin et al., 2022). Success in the criminal case examination stage will influence the success or failure of the investigation at the court hearing later. So, law enforcers need hard work to handle criminal acts and determine whether someone can become a Justice Collaborator (Tarmudi & Malinim, 2023).

Of the several problems regarding handling a Justice Collaborator and Whistleblower, regulations regarding Justice Collaborators and Whistleblowers must be included in the revision of the Criminal Procedure Code. The Criminal Procedure Code is part of the formal criminal law instrument that determines various case examination procedures in the criminal justice system in Indonesia (Mahmud et al., 2021). Because LPSK is not included in the criminal justice system, the problem arises regarding the recommendations receiving less consideration from law enforcers because they have two options: whether they can be considered. Legal protection arrangements for Justice collaborators and Whistleblowers must be included in the revision of the Criminal Procedure Code. This is because many institutions have the authority to receive and handle reports from a Justice Collaborator and Whistleblower. It is necessary to emphasize teaching authority, functions, and duties of procedures
for handling and providing protection to justice collaborators (Kusuma & Adhari, 2021).

4. Conclusion

The research concludes that there are still problems related to legal certainty regarding protecting justice collaborators and determining justice collaborators. Justice collaborators have many weaknesses in the legal system, and the determination of justice collaborators, and many experts think that the law on justice collaborators and the determination of justice collaborators need to create new rules that can reach their domain to achieve effectiveness, so justice should be done. Collaborators must have a clear legal domain in terms of determination, protection, and other facilities, where the role of justice collaborators is to help law enforcement officials investigate the main perpetrators in corruption cases where the justice collaborators will receive threats that endanger their lives.

Legal certainty regarding the main perpetrator provisions in the justice collaborator criteria cannot yet be fulfilled by Indonesian positive law, which can potentially harm law enforcement. Therefore, intervention from the authorities is needed to improve the current legal system to achieve three legal objectives, namely justice, usefulness, and legal certainty, especially regarding justice collaborators. Legal rules with clear substance will create security and public order in society. Having firm and clear rules regarding justice collaborators will attract the attention of criminals to nominate themselves as justice collaborators, thereby making it easier for law enforcers to uncover crimes that are difficult to prove.

References


Azizurrahman: A Legal Protection Model For Handling Human Trafficking in West Kalimantan Border


