
APPLICATION OF THE STATUS OF JUSTICE COLLABORATOR IN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA (CASE STUDY: DECISION OF CENTRAL JAKARTA DISTRICT COURT NUMBER 41/Pid.sus/TPK/ 2017/PN. JKT)

Waras Setiawan*, Edi Saputra Hasibuan, Dwi Atmoko

Universitas Bhayangkara Jakarta Raya, Indonesia

Email: warasanaksupriyadi@gmail.com* edi.saputra@dsn.ubharajaya.ac.id

dwi.atmoko@dsn.ubharajaya.ac.id

ABSTRACT

KEYWORDS

Witness of the
perpetrator, criminal
justice, corruption

In Indonesian criminal law, the status of a Perpetrator Witness (*Justice Collaborator*) has significant legal consequences. With the entry of this *Justice Collaborator* regulation, the threat of criminal punishment will be less effective against perpetrators of serious crimes. This will make it more difficult to identify the main perpetrators in cases of crimes committed together, and will be a new strategy to avoid the threat of high punishment because the status of a *Justice Collaborator* is guaranteed to get leniency for serious crimes committed. The enactment of the regulation on the status of *Justice Collaborator* in corruption criminal justice which provides a guarantee of a reduction in punishment for perpetrator witnesses is seen as very counterproductive with a very high criminal threat for corruption perpetrators as perpetrators of certain crimes (serious crimes). Most people in Indonesia even strongly agree that the criminal threat for the perpetrators of corruption crimes is the death penalty, so great are the hopes of people who want no more corruption crimes that are very detrimental to the state and the people of Indonesia.

INTRODUCTION

Amendments to the 1945 Constitution of the Republic of Indonesia provide changes to the administration of judicial power. In Article 1 paragraph (3) of the 1945 Constitution, it is affirmed that the Indonesian nation is a nation of law. Amendment to the 1945 Constitution, the theory of the legal nation is explained in the General Explanation of the 1945 Constitution which conveys that the Indonesian nation is a legal nation based on law and is not based on power alone. The 1945 Constitution does not provide a more detailed elaboration regarding the Indonesian Legal Nation.

The 1945 Constitution is a written fundamental law, then the Constitution also applies to unwritten basic laws, which are the source of law, such as customs, treaties and others. The Constitution is the highest rule of law in a nation, which is the basis of all law rules. So that all the rules of the law must obey the Constitution or they must not be contrary to the Constitution.

Law is a regulation that controls behavior and correlation between individuals, groups, and institutions in the audience. Law has the purpose of maintaining order, justice, and stability in a nation or community. Law can cover various aspects of life, such as criminal law, civil, constitutional, administrative, international and so on.

Criminal law is the one that regulates criminal acts and explains what acts are considered to be an abuse of criminal law. Criminal acts are intended for any uncommendable act that, if violated, can cause damage to legal objects or a legal necessity. Because of the reprehensible characteristics or the reprehensibility of an action that causes damage, so that the drafters of

the law are formulated according to the norms in the law in which the act is not allowed and if violated, the threat of sanctions or punishment is given to the violator.

Prohibited acts and if violated, of course, then face the law and then obtain a penalty. Criminal law in Indonesia regulates general crimes and special crimes. General criminal law is a law that studies material from the Criminal Code, while special criminal law is a law that studies criminal law that is not the same outside the general law or outside the Criminal Code.

What is meant as a specific criminal act or a special criminal act is one that includes the terminology referred to in Law Number. 31 of 2014 J. Legislation No.13 of 2006 related to the Protection of Witnesses and Victims was subsequently shortened to "PSK Law", as well as SEMA No.4 of 2011 related to the Treatment of Criminal Acts Reporters and Perpetrator Witnesses on Special Criminal Matters and then shortened to "SEMA". Then related to SEMA is an existing regulation to complement the regulations that are not yet complete regarding Perpetrator Witnesses as a guide for Judges and Courts. The following SEMA already has the essence content through global laws that are approved by various nations.

Special criminal acts or later called special crimes in the definition of the Prostitution Law include gross violations of human rights, acts of corruption, *money laundering*, terrorism, *human trafficking*, drug crimes as well as psychotropics and *sexual crimes against children*. Then, based on SEMA, this is a criminal act, especially serious crimes such as corruption, terrorism, drugs, and others, which are problems and latent dangers for public security stability. Threats to *the collapse of institutions, and democratic values, ethic*. The sema determines the variations and characteristics that are covered in the special variations of criminality described in the explanation.

As we enter the 21st century, the global community's attention and concern for corruption problems in various developing countries has become stronger. In expressing global concern about corruption, there are various terms or terms used to refer to criminal acts of corruption, namely being one of the forms of *crime as business, economic*, or being one of the forms of *abuse of power*. The international audience who gathered for the United Nations is well aware of the urgency of joint efforts to solve the problem of corruption, and has found concrete stages in efforts to overcome it.

RESEARCH METHOD

The research method used is a qualitative method with a case study approach. The case study method is very suitable because the focus on one specific court decision allows researchers to delve into the details of the application of justice collaborator status in a specific context. By focusing on the Central Jakarta District Court Decision Number 41/Pid.sus/TPK/2017/PN. JKT, research can reveal the process, decisions, and implications of this status in the criminal justice system in Indonesia.

Qualitative research allows researchers to explore and understand the experiences, perspectives, and complexities in the application of justice collaborator status. This method helps to dig up in-depth information through interviews with judges, prosecutors, lawyers, and possibly cooperating actors, as well as the analysis of related legal documents. Data collection includes analysis of legal documents such as court decisions and academic literature, in-depth interviews with parties involved in the case, and observation of judicial proceedings involving justice collaborators where possible.

Data analysis was carried out through thematic analysis to identify the main themes related to the application of justice collaborators from the data that had been collected and comparative studies with other similar cases. The interpretation of the findings is used to identify the successes, challenges, and legal implications of the implementation of justice collaborator status in the criminal justice system in Indonesia. A comprehensive research report is then compiled to provide recommendations for future judicial policies and practices. With

qualitative methods and case study approaches, this research will provide an in-depth understanding of the application of justice collaborator status and its impact on judicial processes and outcomes.

RESULTS AND DISCUSSION

Corruption in Indonesia has a systemic nature and has a long history, and exceeds the historical length of the Republic of Indonesia. During the 1970 period, Hatta in his capacity as an advisor to the president explained that corruption had "become a culture" in Indonesia. History provides a record that since the Dutch colonial phase, corruption has spread. Moreover, the VOC from a state-owned enterprise owned by the Dutch government which had the task of exploiting Indonesia was forced to go out of business during the 1779 period due to corruption problems. The VOC was replaced by the Dutch East Indies colonial government, when corruption continued to flourish. After the independence phase, the old order period, the new order, and the post-reform phase of 1998, corruption remained fertile.

The growth and development of criminal acts of corruption has expanded to the public. The impact of the nation is that it has suffered significant losses, providing a threat to the stability and security of the public because it weakens institutions and democratic values, ethical values and justice and provides a threat to the rule of law. Then, corruption also causes psychological damage to state executives. According to KPK data from 2004 to March 31, 2014, it featured corruption suspects from elements of the House of Representatives or DPRD with a total of 73 individuals, state institutions or ministries 12 individuals, Governors 10 individuals, regional heads or representatives 35 individuals and Judges belonging to a total of 10 individuals. This means that the act of corruption has shifted through corruption by need to corruption by greed. Criminal acts of corruption can no longer be classified as ordinary crimes but have become an extraordinary crime. Corruption is no longer a local problem of a nation but has become a transnational event that requires global cooperation to prevent and eradicate.

To enforce the rule of law, the Indonesian government has laid a solid foundation of wisdom with the intention of combating criminal acts of corruption. Various policies are explained in the rules of the law, namely Legislation Number 28 of 1999 related to Clean and KKN-Free State Administrators, Legislation Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Criminal Acts, and Law Number 46 of 2009 concerning the Corruption Criminal Acts Judiciary. In order to provide support for the stages of eradicating corruption in the reform era, the government also promulgated Law Number 8 of 2010 Related to the Prevention and Eradication of Anti-Money Laundering and Legislation Number 13 of 2006 in conjunction with Law Number 31 of 2014 Related to the Protection of Witnesses and Victims.

It is not just a matter of legislation, based on the law enforcement side of corruption eradication, the government has created a special institution according to Law Number 30 of 2002 concerning the Corruption Eradication Commission as explained in Article 34 of Law Number 31 of 1999 jo Legislation Number 20 of 2001, that it is necessary to establish a commission to eradicate criminal acts of corruption that are free, and have the obligation and right to eradicate criminal acts corruption.

The KPK has the function of being a stimulus and empowerment of institutions that already exist in the eradication of corruption, namely the police and prosecutors. Then the KPK has the obligation to coordinate with institutions that have authority, carry out supervision, investigate, investigate and prosecute, carry out preventive actions for criminal acts of corruption and carry out supervision on the implementation of the state government.

The development of the regulation of the criminal law on criminal acts of corruption in Indonesia cannot be separated through the development and stages of criminal law reform as in general. As for the growth and development and stages of criminal reform, it has a strong

relationship with the history of the development of the Indonesian state, especially since the proclamation of independence to the development era and the current reform era. In this correlation, it is desirable that the criminal law is sensitive and responsive to the various changes that exist in the Indonesian audience. So that the illustration before carrying out an assessment related to the development of rules for criminal acts of corruption in Indonesia, it is also necessary to mention the conception of the reform of the criminal law in the context of public development.

Individuals who initially easily predicted that criminality could be eliminated by itself with various advances in the economic field. However, in reality, this is not necessarily the case because the advancement of the economic sector has been stubbornly followed by the advancement of various forms of crime, the following reality has paralyzed the past perspective regarding the correlation between crime and the economy, which is based on an approach to negative correlation, where crime is reviewed as one of the influences through bad economic conditions.

Regarding the legal position on development, Muchtar Kusumamatmaja explained, that change and involvement or order are the twin intentions of the people who are carrying out development. If changes will be carried out in an orderly and orderly manner, so that the law is a facility that cannot be ignored at the development stage. However, it must be remembered that, as a facility for public reform, the law itself needs renewal and direction. Thus, in criminal law is one of the legal realms, it is consistently necessary to carry out improvements in the context of legal development as a whole. In this regard, efforts to reform the criminal law are carried out.

The reform of the criminal law is actually strongly related to the background and urgency of the reform. Then the background and renewal of the law of the Idai are also strong in relation to various domains in people's lives. In this relationship, Barda Nawawi Arief affirmed that the background and urgency of reforming the criminal law can be seen both through the socio-political, sociophilosophical, or sociocultural realms. Then it can also be seen based on the aspect of wisdom, including social and criminal policy or through the aspect of wisdom in enforcing criminal law.

To carry out legal functions, in the Indonesian context, there are several main institutions that function in law enforcement, namely the Police, Prosecutor's Office, Judiciary, and Advocates. These institutions will carry out the formulation of the law so that the legal ideals in the form of justice, utility, and legal certainty are achieved.

In terms of maintaining security and order that comes from law enforcement, so that the development of optimal coordination and cooperation with proportionality is needed, because security and law enforcement problems can not only be prosecuted by law enforcement officers or the police, but various aspects and conditions as well as dynamic conditions greatly affect the law and security.

In the theory of the nation of law, so that the nation with the intention of government has a responsibility and provides public protection through actions that disturb the sense of security and order of the public. The role of the government in providing protection to the public, of course, is not only care through external or physical aspects, but also care with the whole related to the inner care aspect, is a sense of calm, comfort, peace and others

The eradication of corruption crimes began since the Old Order, but it has not yet shown good results as desired. The imposition of criminal penalties on corruption suspects is based on the freedom of judges and there is no formulation of criminal instructions. The basis for the freedom of judges is guaranteed by Legislation Number 48 of 2009 related to the Judge's Power of Attorney. The increasing power of judges can cause subjectivity and arbitrariness, such as the tendency to provide a minimum criminal penalty.

The measure to declare a criminal act to be classified as severe or light depends on two things: 1) the value of material losses caused by existing criminal acts; and 2) the audience's assessment of an action at a particular time. According to this idea, so that the criminal acts of corruption that are currently carried out by many State Implementers in Indonesia should be given severe criminal punishment followed by criminal sanctions.

A justice collaborator is an individual who is a witness to the suspect who cooperates with the relevant is one of the special criminal acts, acknowledges that the crime committed is not the core suspect in the crime and gives an explanation as a witness at the criminal stage. These justice collaborators in their development need to get serious attention because they have a key role in exposing criminal acts of corruption that are difficult for law officers to explain. The key role of the Justice collaborator is to explain a criminal act or the existence of a criminal act, to take assets through the acquisition of an act of extortion that can be achieved to the nation, provide information to law enforcement officers, and give testimony at the court stage.

Not only Justice collaborators, there is also the term Whistleblower is an individual who reports actions that have indications of criminal acts of corruption contained in the organization where he works, and he has access to sufficient data on the indication of criminal acts of corruption. Whistleblowers are also called whistleblowers, or fact breakers. Whistleblower regulations in Indonesia can be found in Government Regulation Number 43 of 2018 related to Methods of Implementing Roles and Audiences and Awarding Preventive and Eradication of Corruption Criminal Acts, which conveys the definition of a Whistleblower, is an individual who provides information to a legal officer or commission regarding the existence of a criminal act of corruption and is not a whistleblower.

The network of criminal organizations is so strong that their individuals can control various spheres of power, including executive, legislative or judiciary, including legal officers. It is not uncommon for a syndicate to be exposed because one of them is a traitor. That is, one of them carries out their own acts as Justice collaborators to reveal the criminality they carry out to the public or law officers. In the context of positive law, the presence of Justice Collaborators needs to obtain legal protection so that corruption problems can be properly dismantled. However, in its application, this situation is not a simple problem, because many matters need to be examined how to actually position Justice Collaborators and Whistleblowers in an effort to eradicate acts of corruption, because Justice Collaborators should be protected, because this matter has been clearly explained in Article 33 of UNCAC. The convention has been ratified by the Indonesian state with Legislation Number 7 of 2006 related to the Ratification of UNCAC.

The KPK has an obligation to provide protection to whistleblowers and witnesses who cooperate in disclosing a corruption crime case. Although there is now an institution for the protection of witnesses and victims, which is explained in Law Number 31 of 2014 Regarding Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims (Gazette of the Republic of Indonesia Number 293 of 2014, Supplement to the Gazette of NKIR Number 5602), then named through the Law on the Protection of Witnesses and Victims, there is still no protection through law. Moreover, the figure of a witness who is a suspect in a similar case cannot be acquitted through criminal charges if he is in fact proven legally and convincingly guilty, but his testimony can be a calculation by the judge to grant the criminal leniency given.

Justice collaborators can be submitted by defendants in certain criminal acts such as corruption crimes, terrorism crimes and narcotics crimes, because these crimes are considered extraordinary crimes that are not only committed by one person, but by many people in an organized and systematic manner, each other has an important role in committing criminal acts.

The enactment of the regulation on the status of Perpetrator Witnesses who cooperate with Justice Collaborators (JC) in corruption criminal trials which provides a guarantee of

sentence reduction for perpetrator witnesses, is seen as very counterproductive with a very high criminal threat for corruption perpetrators as perpetrators of certain crimes (serious crimes). Most people in Indonesia even strongly agree that the criminal threat for the perpetrators of corruption crimes is the death penalty, so great are the hopes of people who want no more corruption crimes that are very detrimental to the state and the people of Indonesia.

Every criminal act has a perpetrator as the subject who commits the crime. Here the perpetrator is positioned as a driving force for the realization of a crime/crime/delik This means that a crime will not be able to be carried out without the perpetrator. In this case, the position of the perpetrator in a delik is important and vital. Therefore, the position of the perpetrator in criminal law is no less important than the position of the criminal act itself.

Article 55 of the Criminal Code does not provide a juridical definition related to the definition of a criminal offender, but according to MvT (Momorie van Toulichting) what a perpetrator is is any person (person) who commits/causes an impact that meets the delicacy formula, while according to Jonkers the perpetrator is limited to a person who commits his own act that is similar and meets the delicacy element, which is only referred to as a material perpetrator. Criminal acts if only committed by one person or only one perpetrator will certainly be very easy to determine who the main perpetrator of a criminal act is, because all his actions whether physically or materially, plans, intentions, wills, motives are of course only owned by one person.

However, on the other hand, a *deelneming* that is carried out jointly by many people or known as *deelneming* poses its own complexity in determining who the main perpetrator is in a criminal act. The complexity of determining the main perpetrators/actors in a crime where the perpetrators are several people is often found in the practice of criminal law enforcement.

CONCLUSION

With the reduction of punishment and privileges for witnesses who cooperate (Justice Collaborator), it gives the impression of being counterproductive to the spirit of law enforcement during the reform period, one of which will give the heaviest punishment for corruption crimes. With the application of perpetrator witnesses (Justice Collaborators) will eliminate all of the criminal objectives, namely to create a deterrent effect on the perpetrators of criminal acts, and with the application of perpetrator witnesses to certain crimes, it will cause a sense of legal injustice. The death penalty in Indonesia is applied to extra ordinary crimes such as terrorism and drug abuse, the question is why corruption crimes are not enforced.

There are several legal consequences related to the application of the status of Perpetrator Witness (Justice Collaborator) in criminal law in Indonesia. With the enactment of the Regulation of Justice Collaborators in the criminal justice system (serious crimes), it will result in less effective criminal threats against perpetrators of serious crimes, the difficulty of determining the main perpetrators in a criminal incident committed together, will be used as a new strategy to avoid the threat of high punishment because the status of the Justice Collaborator is guaranteed to get the right to leniency punishment for the serious crimes he committed.

REFERENCES

- John Kenedi” Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum di Indonesia” Yogyakarta: PT. Pustaka Pelajar. 2017
- Edi Saputra Hasibuan, “Hukum Kepolisian dan Criminal Policy Dalam Penegakan Hukum” Depok: PT. Rajawali Pers, 2021.
- Titik Triwulan Titik,”Pokok-Pokok Hukum Tata Negara”, Jakarta: PT. Prestasi Pustaka Publisher,2006.
- Elwi Danil.” Korupsi, Konsep Tindak Pidana dan Pemberantasannya”, Jakarta : PT. Raja

- Grafindo Persada . 2011.Hlm.61.
- Petrus Irwan Panjaitan,Samuel Kikilaitety,” Pidana Penjara Mau Kemana”, Jakarta: IHC, 2007.
- Elisabeth Nurhaini Butarbutar, “ Sistem Peradilan Satu Atap dan Perwujudan Negara Hukum Menurut UU No.4 tahun 2024”, Jurnal Mimbar hukum Vol. 22. (1). 1-200,2010.
- Mar’ie Mahfudz Harahap,Reski Anwar,”Permasalahan Yuridis Penentuan Pelaku Utama Dalam Pemberian Justoce Collaborator Sebuah Tindak Pidana Tertentu”, Jurnal hukum XVI/No,1/Juni 2022
- Aulia Milono,”Formulasi Pedomen Penjatuhan Sanksi Pidana Terhadap Penyelenggara Negara Yang Melakukan Tindak Pidana Korupsi Di Indonesia”, Jurnal hukum Arena hukum.Vol.7.(1).1- 150.April 2014.
- Adi Syahputra Sirait,”Kedudukan dan Efektivitas Justice Collaborator di Dalam Hukum Acara Pidana”, Jurnal El-Qanuny Vol.5.(2) Juli-Desember.2019.
- Jupri,”Reward Keringanan Sanksi Pidana Bagi Justice Collaborator Perkara Korupsi” Article Maret 2018.
- Mar’ie Mahfudz Harahap,Reski Anwar,”Permasalahan Yuridis Penentuan Pelaku Utama Dalam Pemberian Justoce Collaborator Sebuah Tindak Pidana Tertentu”, Jurnal hukum XVI/No,1/Juni 2022.
- Shinta Agustina,”Implementasi Asas Lex Specialis Darogat Legi Generali Dalam Sistem Peradilan Pidana”, Jurnal MMH Jilid 44 Nomor 4.Oktober 2015
- Ferry Irawan Febriansyah.” Keadilan Berdasarkan Pancasila Sebagai Dasar Filosofis Dan Ideologis Bangsa” Jurnal Ilmu Hukum.Vol 13 Nomor 25 Februari 2017.
- Undang-Undang No.48 tahun 2009 tentang Kekuasaan Kehakiman.
- Undang-Undang 31 tahun 2014 tentang Perlindungan Saksi dan Korban.
- Undang-Undang Nomor 8 tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana.
- Undang-Undang Nomor 20 tahun 2001 tentang Perubahan Atas Undang- Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.
- Undang-Undang Nomor 19 tahun 2019 tentang Perubahan kedua atas Undang-Undang Nomor 30 tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi.
- SEMA No.04 tahun 2011 tentang Perlakuan Terhadap Pelapor Tindak Pidana (whistle Blower) dan Saksi Pelaku Yang Bekerja Sama (Justice Collaborator).
- Putusan PN Nomor Nomor 41/Pid.sus/TPK/2017/PN.JKT..

Copyright holders:

Waras Setiawan, Edi Saputra Hasibuan, Dwi Atmoko (2024)

First publication right:

Devotion - Journal of Research and Community Service



This article is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International](https://creativecommons.org/licenses/by-sa/4.0/)