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Protection Threat Risk of Job Loss Justice Collaborator

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ABSTRACT: Corruption is a criminal act classified as White-Collar Crime, which can only be committed by people who have inherent authority because of their position or power in an organization and/or in a government system. The research method was carried out using an analytical approach, namely knowing the meaning contained in the terms used in the laws and regulations related to Justice Collaborator, as well as knowing their application in practice, which is also closely related to the systematic review aspect of the relevant laws and regulations, by conducting technical studies. The second approach taken is the statutory regulations approach considering that this research will examine various statutory regulations related to Justice Collaborator. The respondents in this research are law lecturers, law faculty deans, criminal law lecturers, prosecutors, judges, lawyers, and students and related institutions. The results of research on justice collaborators related to Law No. 13 of 2006 which has been changed to Law No. 31 of 2014 concerning Witness and Victim Protection (W&V Protection), apparently do not protect against the risk of losing their job for Justice Collaborators. The results of the research are very useful for the regulation and implementation of justice collaborators in disclosing criminal acts of corruption, namely that justice collaborators are very important and needed in disclosing criminal acts of corruption. The Corruption Court can uncover criminal acts of corruption quickly and precisely which will have an impact on saving costs, time, energy, and thought. Still, the existence of a justice collaborator cannot be sovereign because it will result in dependence on law enforcement officials. in uncovering criminal acts of corruption with the information provided. The knowledge of law enforcers must also be increased, especially in the cybercrime field, so it is hoped that there will be ideal regulation and implementation in Indonesia.

KEYWORDS: witnesses, protection, justice collaborators.

INTRODUCTION

Justice collaboration is a new phenomenon in the practice of criminal justice for corruption. The criminal act of corruption is a threat to the principles of democracy which uphold transparency, accountability, integrity, and security as well as the stability of the Indonesian nation, therefore corruption is a structured and systematic crime that will ultimately harm state finances and hinder sustainable development, thereby also hampering economic growth, which is one of the most important indicators in analyzing economic development that occurs in a country.

In 2018 the Corruption Eradication Commission (KPK) handled 454 corruption cases with state losses amounting to IDR 9.2 trillion, in 2019 this decreased to 271 cases, a decrease of 183 cases or 40.30% but state losses increased to IDR 12 trillion, an increase of IDR 2.8 trillion or 25.76% compared to 2018. In 2020, corruption cases handled by the KPK increased again to 444 cases.

An increase of 173 cases or 38.40% from 2019, while state losses in 2020 amounted to IDR 56 trillion, an increase of IDR 44 trillion or 36.60% from 2019. State losses that can be recovered each year continue to decline starting from 2018 which can be returned amounting to IDR 838 billion, in 2019 it was IDR 748 billion and in 2020 it was IDR 8.9 trillion.

This situation occurs because, among other things, the government administration system is not organized in an orderly manner and is not properly supervised. As an answer to the existing problems, the Lex Mercatoria Principles emerged. This principle is a legal norm that is a combined product of various substantive laws or material laws taken from various legal systems without being tied to one legal system. The spirit that emerges is the spirit of tolerance and voluntary submission between family law systems. For this, examples can be given in the form of UNCAC 2003 and UNCATOC which were ratified into Law No. 7 of 2006 and Law No. 5 of 2009. To measure the success of uncovering the phenomenon of the level of corruption, namely the willingness of the perpetrators of corruption themselves to become witnesses of a criminal act of corruption (perpetrator's witness/Justice Collaborator) and the willingness of the state to respond to the report and provide maximum protection and even reward the courage of the

perpetrator who carried it out. However, have they received maximum protection from the government, especially for their work before becoming perpetrator witnesses or Justice Collaborators?

Therefore, Justice Collaborators are needed in resolving crimes through criminal justice practices, of course by providing maximum protection. The statutory provisions closest to the Justice Collaborator issue are Law No. 13 of 2006 and which has been revised into Law No. 31 of 2014 concerning the Protection of Witnesses and Victims. Meanwhile, other provisions that are below the law are in the form of Supreme Court Circular Letter (SEMA) No. 4 of 2011 dated 10 August 2011 concerning the treatment of perpetrator witnesses who cooperate (Justice Collaborators) in certain criminal acts, Government Regulation no. 99/2012 concerning the second amendment to Government Regulation Number 32 of 1999 concerning conditions and procedures for implementing the rights of correctional inmates and Government Regulation No. 71 of 2000 concerning Procedures for Implementing Community Participation and Giving Awards in the Prevention and Eradication of Corruption Crimes.

In many cases, someone who often knows about crimes is reluctant to reveal what they know, experience, or witness themselves. For this reason, someone who knows about the crime requires extraordinary courage to reveal the crime by conveying what they know about the crime to the public and law enforcement officials. The reluctance to reveal what is known to have been experienced or witnessed by oneself is not without reason. Several of the Justice Collaborator cases above show that apart from the weaknesses in the Justice Collaborator's legal arrangements, choosing to testify as a Justice Collaborator is not without risk. It is not without consequences and risks, including the risk of losing his job and other legal risks. Paying close attention to the position of Justice Collaborator, there are several legal provisions that cause problems in terms of regulations and their implementation in material criminal law and formal criminal law. In criminal cases, witness testimony is the most important form of evidence in criminal cases. There is no criminal case that escapes the verification of witness testimony. Almost all evidence in criminal cases always relies on examining witness statements. At least apart from proving it with other evidence, it is still always necessary to prove it with witness testimony. However, of course, the value and evidentiary strength of the evidence of witness testimony has a level of evidentiary value, where the requirements must be met for the witness statement to be valid and valuable, such as having to take an oath or promise as regulated in Article 160 paragraph (3) of the Criminal Procedure Code and Article 160 paragraph (4) Criminal Procedure Code

Since the implementation of the HIR, namely Article 265 paragraph 3, confidence in the truth of a witness' statement before a trial is placed on the existence of an oath, which is pronounced before giving a statement or after giving a statement. The provisions in Article 265 paragraph (3) of the HIR were completely adopted into the Criminal Procedure Code, requiring witnesses before giving information to first take an oath or promise according to their religious method, which contains an oath or promise that they will give true information and nothing other than the truth. This way of swearing is called promissoris, which means being able to tell the truth. On the other hand, the provisions of Law No. 13 of 2006 in Chapter II which has been revised into Law No. 31 of 2014 concerning the protection and rights of witnesses and victims, there is a provision in Article 10 paragraph (1) which confirms: witnesses, victims, and reporters cannot be prosecuted legally either criminally or civilly for reports, testimonies that he will, is, or has given. In the provisions of Article 10 paragraph (2) which regulates: that a witness who is also a suspect in the same case cannot be released from criminal charges if he is legally and convincingly proven guilty, but his testimony can be used as a consideration by the judge in mitigating the sentence to be imposed. From the second perspective, the above legal provisions raise the question of whether the Justice Collaborator is a witness or a perpetrator.

The formulation of the provisions above creates problems of multiple interpretations and unclear formulation of the position of a witness and a suspect, as well as the conditions under which a witness becomes a suspect when at the same time he also has the status of a reporter. The provisions of Article 10 paragraph (1) and paragraph (2) of the Witness Protection Law, apart from being ambiguous or contra legem, these provisions have the potential to cause a conflict of authority between institutions authorized to conduct investigations and determine a person's status as a witness or suspect and institutions authorized to protect a witness. This series of issues often create legal uncertainty for Justice Collaborators.

Thus, the legal protection policy related to the regulation of Justice Collaborators has not been maximally regulated. Reading the direction of Indonesian legal politics mainly concerns the eradication of corruption since the presence of Law of the Republic of Indonesia no. 31 of 1999 concerning the eradication of criminal acts of corruption, Law of the Republic of Indonesia no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the eradication of criminal acts of corruption and Law no. 30 of 2002 concerning the Corruption Eradication Commission, then the President of the Republic of Indonesia issued Instruction No. 5 of 2004 concerning the acceleration of the eradication of corruption, it seems that there is political awareness and legal awareness that the crime of corruption is a crime that has a serious stage so that it is seen as an Extraordinary Crime. These statutory provisions encourage motivation to complete criminal acts of corruption which contain complexity and complexity, in addition to being organized and operating neatly and sophisticatedly, but of course, they require formulation and strategies that can offset the escalation of corruption crimes. This means that handling corruption cases as extraordinary crimes requires extraordinary handling methods as well. Therefore, according to Saldi Isra, the agenda for eradicating corruption requires important steps such as shock therapy.

According to S. Anwari, the basis for the government's considerations regarding this matter can be seen when it issues Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission which clearly states:

a. The eradication of criminal acts of corruption has not been implemented optimally. Therefore, the eradication of criminal acts of corruption needs to be increased professionally, intensively, and sustainably because corruption has harmed state finances, and the state economy and hampered national development.
b. Government institutions that handle criminal acts of corruption have not functioned effectively and efficiently in eradicating corruption.

Based on the above, a special institution is needed to handle the eradication of corruption independently, namely the Corruption Eradication Commission. The commission has the authority to recruit independent investigators, the authority to examine state officials and council members with simple and fast licensing procedures. Other powers that are also interesting from the criminal law aspect are the use of Justice Collaborators (as secret whistleblowers) and secret wiretapping (Wire Tapping Electronic Interception).

Talking about Justice Collaborator certainly cannot be separated from criminal law policy or politics. From the political perspective of criminal law, it cannot be denied that there is a need for clear legal protection regarding Justice Collaborators. Of course, it requires the ability and support of various parties to create a comprehensive and effective criminal justice system and produce a judicial process that can be relied upon in resolving various serious and complex crimes such as Corruption Crimes. The Witness and Victim Protection Agency (LPSK) is expected to be able to build a protection system against all forms of Law No. 13 of 2006 which has been revised into Law No. 31 of 2014 concerning the Protection of Witnesses and Victims is a government legal policy whose direction and aim is to complete procedural instruments in the criminal justice process that focus not only on perpetrators but also on witnesses and victims. For this reason, we need a Witness and Victim Protection Agency which is expected to work optimally and objectively in protecting at all stages of the criminal justice process.

The presence of the Witness and Victim Protection Agency (LPSK) terrorizes and intimidates anyone who wants to give testimony to reveal the crime by collaborating with law enforcement officials. To realize this protection system, it is very necessary to regulate legal material and a clear legal structure, all of which cannot be separated from the same commitment, the same perception, as well as cooperation as an integral and holistic system. However, in reality, the criminal justice process, from the stages of inquiry, inquiry, arrest, detention, prosecution, and trial examination, to conviction, is a very complex activity, so protecting witnesses and victims is not an easy task. The use of the Justice Collaborator instrument, which is expected to be able to resolve various cases of criminal acts of corruption to uphold truth and justice, also faces regulatory and implementation obstacles that are no less complex.

The presence of Law No. 31 of 2014 concerning Witness and Victim Protection was initially hoped to be a response to difficulties in law enforcement in revealing and investigating perpetrators of organized and well-covered corruption crimes. However, it turns out that the provisions governing Justice Collaborators in Law No. 31 of 2014 concerning Witness and Victim Protection do not explicitly regulate this matter, also regarding a person's ability and willingness to provide testimony in the judicial process with investigators, prosecutors or judges without fear of intimidation or retaliation. Law no. 31 of 2014 concerning Witness and Victim Protection Institutions does not seem to be designed to anticipate the situation of Justice Collaborators who often face perpetrators of corruption crimes who are difficult to reach because of the absence of evidence that can be presented, and there are no witnesses who are willing to take the risk of uncovering and exposing the secret of the crime. by providing information and being willing to cooperate with law enforcement officials.

Concern about retaliation and fear of a wide network of perpetrators extends to law enforcement officials who do not rule out the possibility of actually harming and using the law to protect the perpetrators and conversely processing anyone who dares to disturb the interests of the perpetrators of these corruption crimes.

RESEARCH METHODS

This research focuses on the research object in the form of issues regarding applicable legal provisions related to Justice Collaborator. Research on justice collaborator job loss risk protection issues is intended to study whether existing legal provisions provide adequate regulation of the basic principles of Justice Collaborator regulation. In other words, the focus of the study is positive law and therefore it is included in normative legal science because it is a process for finding legal rules, legal principles, and legal doctrines to answer the legal issues faced. Because the research method used is a normative legal method, namely legal research is carried out by examining library materials or secondary data. Judging from its nature, this research uses 2 (two) approaches known as normative law. This means that this research is included in juridical-normative research, which is related to two main aspects, namely the formation of law and the application of law.

Therefore, the approach used is analytical, namely knowing the meaning contained in the terms used in laws and regulations related to Justice Collaborator, as well as knowing their application in practice, which is also closely related to the systematic review aspect of laws and regulations. related invitations, by conducting technical studies. The second approach taken is the statutory approach (statute approach) considering that this research will examine various statutory regulations related to Justice Collaborator.

Research Typology

Judging from its nature, this research is exploratory or explores a problem. This dissertation research is normative-analytical, namely by emphasizing the study of theories relating to types of witnesses, the position of witnesses in criminal procedural law, and the regulation of Justice Collaborators in the criminal justice system in Indonesia, which is also linked to its implementation through related court decisions. Thus, the data in this research is primary data and secondary data, namely in the form of statutory regulations relating to Justice Collaborator, the Witness and Victim Protection Act, and court decisions related to various corruption cases.

This primary legal material is complemented by secondary material, namely in the form of documents (minutes) in the Justice Collaborator's discussions on the draft Law on Witness and Victim Protection. This is intended to find out the process of forming laws, related to the legal arguments used by the government and the DPR in enacting these laws.

The type of data used is secondary data in the form of various literature regarding Justice Collaborators. Thus, library research is the dominant research in the preparation of this dissertation. In this research, tertiary legal materials were also used, in the form of a legal dictionary, as well as an Indonesian legal dictionary. In terms of its form, this research is evaluative, namely whether the Justice Collaborator, both in its regulations and implementation, is an effective means and tool in disclosing criminal acts of corruption.

In terms of the objectives of this research, it is intended that there is clarity regarding the regulation of the position of Justice Collaborator, as well as how to implement it appropriately and effectively, there is a uniform understanding among law enforcement officials in disclosing criminal acts of corruption, so that there is no clash of authority between institutions, in this case primarily law enforcement agencies. This research on Justice Collaborator only limits itself to the science of criminal law, especially regarding mono-disciplinary criminal acts of corruption.

RESULTS AND DISCUSSION

Research Results on the Interpretation of Criminal Law Regarding Justice Collaborators

The term Justice Collaborator is new terminology in the realm of criminal law. In many provisions of criminal law, the term or terminology of Justice Collaborator has not been adopted. The legal provisions closest to the Justice Collaborator issue are Law No. 13 of 2006 which has been revised into Law No. 31 of 2014 concerning the Protection of Witnesses and Victims.

Meanwhile, other provisions that are in position under the law are in the form of Supreme Court Circular Letter (SEMA) No. 4 of 2011 dated 10 August 2011 concerning the treatment of perpetrator witnesses who cooperate (Justice Collaborators) in certain criminal acts. Furthermore, there is also Government Regulation No. 99 of 2012 concerning the second amendment to the Regulations.

Government Number 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Prisoners and Government Regulation No. 71 of 2000 concerning Procedures for Implementing Community Participation and Giving Awards in the Prevention and Eradication of Corruption Crimes. However, in general, it can be seen that the various provisions mentioned above do not show a harmonious understanding regarding the existence of the Justice Collaborator. In Indonesian legal vocabulary, the term Justice Collaborator etymologically is often interpreted as "crown witness".

Based on the definitions above, the term Justice Collaborator is more appropriate if translated into our legal language as "Witness, the perpetrator who is not the main perpetrator. The word "Witness" in general is likely to contain broad connotations of meaning, which can include:

a. "Witness" in the sense of "actual witness", namely a person who hears and/or sees for himself an event about which he provides information by hearing and/or seeing. So he did not experience or be involved at all in the incident. Information given by a witness in this sense usually tends to be because it is needed and requested by law enforcement or other parties involved in a case.
b. Witness in the sense of "victim-witness", namely a person who hears for himself and/or sees for himself or even experiences an incident himself where he is the victim of the incident. By hearing and/or seeing as well as events he experienced (in which he was a victim), he provides information. So here, no matter how small the percentage, the testimony of a victim witness certainly contains nuances of the intention that the losses and suffering he experienced as a victim receive attention, protection, and legal compensation or restitution.

The concept and term Justice Collaborator or collaborator with justice is something new in Indonesia. In the Recommendation of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice (Adopted by the Committee of Ministers on April, 20th, 2005 at the 924th meeting of the Ministers Deputies, Justice Collaborator or collaborator justice is defined as follows:

> Any person who faces criminal charges, or has been convicted of taking part in a criminal association or other criminal organization of any kind, or in offenses of organized crime, but who agrees to cooperate with criminal justice authorities, particularly by giving a testimony about a criminal association or organization, or about any offense connected with organized crime or other serious crimes.

Protection Threat Risk of Job Loss Justice Collaborator

According to Gayus Lumbuun, a Justice Collaborator is a suspect or witness to a perpetrator who is not the main perpetrator in the same crime who has admitted to being a perpetrator of the crime, collaborating with investigators, with the hope of receiving special treatment, both during the investigation, prosecution and in the judge imposes a sentence against him and reduces his sentence.

Fausto Zuccarelli stated the meaning of Justice Collaborator as follows, "A person who is also a perpetrator of a criminal act who assists law enforcement officers to uncover and/or return the assets/proceeds of a serious and organized criminal acts by providing testimony in the judicial process."

Meanwhile, according to Artidjo Alkostar, the definition of a Justice Collaborator is a person involved in a crime whose role is to reveal the crime, and the competent institution to determine a person involved in a crime as a Justice Collaborator is the Witness and Victim Protection Agency (LPSK). A Justice Collaborator must receive leniency because he is considered to be collaborating with law enforcement in uncovering crimes.

In SEMA No. 04 of 2011, the qualification for a person who can be appointed as a Justice Collaborator is that the person concerned is one of the perpetrators of certain criminal acts as regulated in this SEMA (certain serious criminal acts such as corruption, terrorism, narcotics, money laundering, human trafficking or criminal acts others of an organized nature), admitting to committing the crime, not being the main perpetrator in the crime and providing information as a witness in the judicial process. Not much different, in the Joint Regulation of the Minister of Law and Human Rights, Attorney General of the Republic of Indonesia, Police of the Republic of Indonesia, KPK and LPSK, No. 4 of 2011 concerning Protection for Whistleblowers, Reporting Witnesses and Cooperating Perpetrator Witnesses, it is stated that a Justice Collaborator is a witness who is also a perpetrator of a criminal act who is willing to assist law enforcement officials in uncovering a criminal act or the impending occurrence of a criminal act to return assets. - assets or proceeds of a criminal act to the state by providing information to law enforcement officials and providing testimony in the judicial process.

Based on the definitions above, it can be concluded that there are two categories of Justice Collaborators as follows:

1. First, a witness who is the perpetrator of a criminal act that is jointly committed with another person. This first category is essentially the same as the concept of the offense of participation in the provisions of Article 55 and Article 56 of the Criminal Code, where a person's involvement in a criminal act and reporting the case to law enforcement officials occurs in several possibilities, namely as a person who participates with other people in committing it. a criminal act, at the suggestion of another person, at the direction of another person, and who helps another person commit a criminal act.
2. Second, witnesses who are perpetrators of other criminal acts reveal and report the occurrence of a criminal act to enforcement officials and are willing to give testimony at trial. The criminal acts committed by the witness are not the same as the criminal acts committed by other people which he disclosed and reported to law enforcement officials.

Meanwhile, if we look at the stages of determining someone as a Justice Collaborator, it can also be divided into two, namely

First, a Justice Collaborator before the legal process, namely a justice collaborator who commits a crime together with other perpetrators who voluntarily discloses the crime he committed together with other perpetrators to law enforcement institutions or the public. Justice Collaborator's profile before the legal process was represented by Agus Condro, a convict in the traveler's check gratification case in the election of Deputy Governor of Bank Indonesia, Miranda S. Gultom.

Second, the Justice Collaborator in the legal process, namely the Justice Collaborator who together with other perpetrators commits an illegal act or crime which, when the legal process against him takes place, reveals the involvement of the perpetrators in committing the illegal act or crime together with himself, which results in him being tried. The Justice Collaborator's profile in the legal process was represented by Mindo Rosalina Manulang who revealed the involvement of Nazarudin and Angelina Sondakh in the Wisma Atlet corruption case.

The fact that the term Justice Collaborator is explicitly stated in statutory regulations including Law Number 13 of 2006 concerning Protection of Witnesses and Victims is not found. The term Justice Collaborator was only discovered explicitly based on SEMA Number 4 of 2011 concerning Treatment for Criminal Reporters and Witnesses Who Cooperate (Justice Collaborator) in Certain Criminal Cases, and Joint Regulations. This means that the understanding of Justice Collaborator often overlaps.

In the Academic Paper on Amendments to Law Number 13 of 2006 which has been revised into Law No. 31 of 2014 concerning the Protection of Witnesses and Victims, it is emphasized that these changes were prepared by considering philosophical, sociological, and juridical aspects. The existence of Law No. 31 of 2014 concerning the Protection of Witnesses and Victims is a government legal policy whose direction and aim is to complete procedural instruments in the criminal justice process that focus not only on perpetrators but also on witnesses and victims. For this reason, a Witness and Victim Protection Agency is needed which is expected to work optimally and objectively in protecting at all stages of the criminal justice process.

The presence of the Witness and Victim Protection Agency (LPSK) certainly requires the ability and support of various parties to create a comprehensive and effective criminal justice system and produce a judicial process that can be relied upon in resolving various serious crimes that have complexity such as Corruption Crimes. The Witness and Victim Protection Agency (LPSK) is expected to be able to build a protection system against all forms of terror and intimidation for anyone who wants to give testimony to reveal these crimes by collaborating with law enforcement officials. To realize this protection system, it is very

necessary to regulate legal material and a clear legal structure, all of which cannot be separated from the same commitment, the same perception, as well as cooperation as an integral and holistic system.

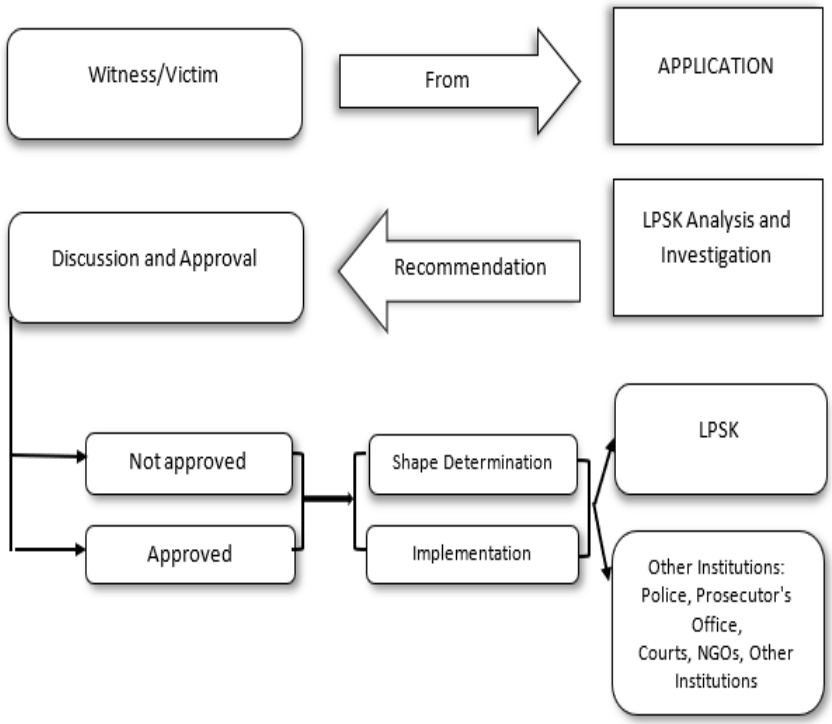

Figure 1.Flowchart of Mechanism for Providing Protection for Witnesses/Victims

However, in reality, the criminal justice process, from the stages of investigation, investigation, arrest, detention, prosecution, examination at trial, to sentencing, is an activity that is so complex that protecting witnesses and victims is not an easy task. The use of the Justice Collaborator instrument is expected to be able to resolve various cases of criminal acts of corruption for the sake of upholding truth and justice, but it also faces regulatory and implementation obstacles that are no less complex, both in Law No. 13 of 2006 and in its amendment to Law No. 31 of 2006. 2014 In Articles 10 and 10. There is no protection regarding the work of Justice Collaborators.

The presence of Law No. 31 of 2014 concerning Witness and Victim Protection was initially expected to be a response to the difficulties in law enforcement in revealing and investigating perpetrators of organized and well-covered corruption crimes. However, it turns out that the provisions governing Justice Collaborators in Law No. 31 of 2014 concerning Witness and Victim Protection do not explicitly regulate this matter, also regarding a person's ability and willingness to voluntarily provide testimony in the judicial process with investigators, prosecutors, or judges without fear of intimidation or retaliation. Law no. 31 of 2014 improvements to Law no. 13 of 2006 concerning Witness and Victim Protection Institutions do not seem to be designed to anticipate the situation of law enforcement which often faces perpetrators of corruption crimes who are difficult to reach because of the lack of evidence that can be presented, and there are no witnesses who are willing to take the risk of revealing and exposing the secret of the crime. by providing information and being willing to cooperate with law enforcement officials.

Research on Legislation Related to Justice Collaborators

If you pay close attention, you can see that the meaning of Justice Collaborator among scholars still varies, although in principle it has narrowed down, especially about the terminology used in Indonesia, considering that Justice Collaborator is a foreign term that must be translated in the Indonesian context.

The following are several laws and regulations in Indonesia that relate to or regulate Justice Collaborators. There are several terms used in several existing regulations, such as crown witness, perpetrator witness, and perpetrator of a criminal act. Regulations regarding perpetrator witnesses in Indonesia have been regulated in several laws and regulations, including:

a. Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP);
b. Law no. 31 of 1999 concerning Eradication of Corruption Crimes;
c. Government Regulation no. 71 of 2000 concerning Procedures for Implementing Community Participation and Giving Awards in the Prevention and Eradication of Corruption Crimes;
d. Government Regulation no. 57 of 2003 concerning Special Protection for Whistleblowers and Witnesses to Money Laundering Crimes;
e. Law no. 13 of 2006 concerning Witness and Victim Protection;

f. Supreme Court Circular Letter (SEMA) Number 4 of 2011 concerning the Treatment of Witnesses to Perpetrators Who Cooperate (Justice Collaborators);
g. Joint Regulation of the Minister of Law and Human Rights, Attorney General, Chief of Police, Corruption Eradication Commission (KPK), Witness and Victim Protection Agency (LPSK) concerning Protection for Whistleblowers, Reporting Witnesses, and Collaborating Witnesses of Perpetrators;
h. Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning Witness and Victim Protection

DISCUSSION

Discussion about the importance of justice collaborators in uncovering structured, systemic, and massive criminal acts of corruption

Decades ago Lord Acton once said "Power tends to corrupt; Absolute power corrupts absolutely" Power tends to be full of corruption, I think this is the right quote to describe how strong corruption is with the power which has given rise to instability in strategic areas. In the results of research conducted by the author on 17 respondents regarding protection against the threat of losing their job, Justice Collaborator obtained almost the same response regarding the position of Justice Collaborator as a perpetrator witness who collaborates with law enforcement in uncovering criminal acts of corruption, because:

1. A Justice Collaborator is directly involved in crimes committed together with his group.
2. A Justice Collaborator provides information to law enforcers about what he saw, experienced, and what he heard so that it will be easier for law enforcers to obtain information in uncovering the crime. This has a positive impact on the costs, time, and energy spent.

However, even though it has been regulated that they will receive an award which can be in the form of a lighter sentence among other defendants, the government has not yet provided all protection for Justice Collaborators, such as the lack of protection regarding the threat of losing one's job and the threat of being sued for slander and defamation using the law. ITE.

It is known that the actions taken by the Corruption Eradication Committee and the authorities have been extraordinary enough to offset the increasingly widespread corruption cases, to balance and follow up on this matter, the Supreme Court issued Supreme Court Circular (SEMA) number 4 of 2011 concerning the treatment of judicial collaborator witnesses who work together with law enforcers/Justice Collaborators in providing information and assistance to law enforcers, then Justice Collaborators receive awards which can be in the form of special conditional probation, granting remission and assimilation, conditional release, imposing the lightest crime among other defendants who are proven guilty, appearing The existence of Justice Collaborator is based on several provisions including:

1. Article 37 paragraph (2) UNCAC 2003 reads "consider providing the possibility in certain cases, reducing the sentence of a perpetrator who provides substantial cooperation in the investigation/prosecution" and has been ratified by Law Number 7 of 2006 which confirms that Corruption is an extraordinary crime that must be fought because it has a massive impact on the life of the country, so its eradication must be carried out extraordinarily.
2. Article 37 paragraph (3) UNCAC 2003 which reads "in accordance with the basic principles of national law to provide immunity from prosecution for perpetrators who provide substantial cooperation in the investigation/prosecution"
3. Article 10 of Law Number 13 of 2006 concerning the protection of Witnesses and Victims.
   a. Witnesses and victims cannot be prosecuted for their reports and testimony.
   b. A witness who is also a suspect in the same case cannot be released from criminal charges if 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.
4. Article 97 point (1) letter F of the Criminal Procedure Code regarding the criminal prosecution decision letter, one part of which discusses the aggravating and mitigating circumstances of the defendant, in this case, the mitigating circumstances include the provision of acquittals that are not complicated, cooperative, have never been convicted before, are young, be kind/polite during the trial and have family member responsibilities.

Apart from that, maintaining the existence of Justice Collaborators is also supported by a joint regulation signed by the Minister of Law and Human Rights, the Attorney General, the National Police Chief, the Corruption Eradication Committee, and the Chair of the LPSK regarding protection for Justice Collaborators. Almost the same as the provisions in Article 37 UNCAC 2003, namely Article 26 United Nations Convention Against Transnational Organized Crime 2000 which has been ratified by Law number 5 of 2009. The criteria for becoming a Justice Collaborator are stated in SEMA No. 4 of 2011 in Number (9a) and (b) and information from the Ministry of Law and Human Rights which is used in uncovering extraordinary/organized criminal acts, the Justice Collaborator is not the main perpetrator, the information provided must be significant, relevant and reliable, the perpetrator admits the actions taken accompanied by his willingness to return the assets obtained in writing, willing to work together and cooperatively with law enforcement.

The idea for the birth of Justice Collaborator came from the spirit of uncovering bigger cases, considering that corruption is an organized crime that involves several people in a coordinating circle to achieve the same goal, sometimes the perpetrators also cooperate with law enforcement officials and form a network of corrupt gangs. solid. Being in this group gives rise to what is called

in the world of psychology paranoid solidarity, namely feelings of fear of being ostracized, hated, and trapped in a group so that inevitably the perpetrators will protect each other.

Legal protection for justice collaborators from obstacles when giving testimony in corruption crime cases.

One of the problems in efforts to eradicate criminal acts of corruption is the problem of law enforcement (law enforcement), especially the judicial process. The UN Anti-corruption toolkit states that "While the development of the convention reflects the recognition that efforts to control corruption must go beyond the criminal law, criminal justice measures are still clearly a major element of the package". So there is a recognition that corruption courts must go beyond criminal law and that many of these steps or actions are also caused by obstruction of the judicial process.

Obstruction of the criminal justice process for corruption is regulated in Article 25 of the UN Convention against Corruption. The article states that every country is obliged to take legislative and other actions deemed necessary to determine it as a criminal offense if it is committed intentionally:

1. The use of physical force, threats intimidation, or promises, offering or providing undue benefits to encourage false testimony or to interfere with the giving of testimony or the production of evidence in a proceeding in connection with a criminal offense established following this convention.
2. Use of physical force, threats, or intimidation to interfere with implementation.

Official duties by the judiciary or law enforcement about criminal acts are determined by this convention.

Apart from the provisions of Article 25 mentioned above, article 32 of the Convention against Corruption is also closely related to obstruction of the judicial process, especially about witnesses. Ferguson commented on the provisions of Article 32, stating that:

1. Article 32 (1) requires the state to take appropriate steps (to take appropriate measures) to provide effective protection from retaliation or intimidation of witnesses who give testimony in corruption cases (retaliation or intimidation of witnesses who give testimony in corruption cases) and if needed for family and people close to them.
2. The state's obligation to take appropriate action is limited to action that is following its national legal system and within the limits of its capabilities. Effective protective measures can be very expensive and therefore there are real concerns that in some countries such measures may be absent or very limited due to lack of financial resources.
3. Article 32 paragraph (1) expressly states that these provisions apply to witnesses who give testimony, however, the UN legislative guidelines for the implementation of the United Nations Convention against Corruption as well as criminal law experts have formulated obstacles to the judicial process in the draft law. criminal law code (RUU-KUHP) of 2008. These provisions are regulated in Chapter VI concerning criminal acts against the judicial process, specifically the second part concerning obstruction of the judicial process, the 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 statements at court hearings; or
3. Prevent, obstruct, or thwart, directly or indirectly, the process of investigation, prosecution and examination in court.

Article 330 (1) is punishable by a maximum imprisonment of 5 (five) years or a maximum fine of category IV, every person who:

1. Hiding people who have committed criminal acts or people who have been charged with committing criminal acts;
2. Assisting people as intended in the letter "a" to avoid investigation or detention by officials authorized to carry out investigation or detention; or
3. After a criminal act has occurred, to cover up or obstruct or complicating the investigation or prosecution, destroying, eliminating, or hiding objects that were targets or means of committing a criminal act or traces of other criminal acts or withdrawing them from the examination being carried out 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 to avoid prosecution against blood relatives or blood relatives in the second-degree straight line or the third-degree sideways line or against the wife or husband or ex-wife or husband.

Article 331. Any person who prevents, obstructs, or thwarts the examination of a corpse for 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. most are 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 following 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:

a. 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;
b. Destroy, damage, or render unusable an item confiscated based on the provisions of applicable laws and regulations.
    1) (2). Storing goods that carry out, allow to be carried out, or assist in carrying out the acts as intended in paragraph (1) shall be punished by a maximum imprisonment of 5 (five) years or a maximum fine of category IV.
    2) (3). If the act as intended in paragraph (2) occurs due to storage errors, 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 statement gives rise to legal consequences, provides false information on oath, either orally or in writing, by himself or by his attorney specifically appointed for that purpose who is given If the case is examined in court and causes harm to the opposing party, the perpetrator of the criminal act shall be punished with imprisonment for a maximum of 10 (ten) years, a maximum fine of 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 before the court shall be punished by 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. However, in this case, the concept of restorative justice is very inappropriate to apply to protect justice collaborators with the following arguments:

1. Restorative Justice can only be carried out in the Civil Code, not special crimes (corruption, murder, trafficking in persons, money laundering) based on the principle of inequality as justice, so the contribution made by the Justice Collaborator in uncovering this corruption case has legal standing, namely Law No. .13 of 2006 which has been revised into Law No.31 of 2014 concerning Protection of Witnesses and Victims and SEMA No.4 of 2011 concerning Treatment of Whistleblowers and Justice Collaborators and regulated in Law No.7 of 2006 concerning UNCAC Ratification (UU 7 /2006) Law No. 5 of 2009 concerning UNTOC Ratification (UU 5/2009) which is used as the basis for distinguishing it from ordinary contributions, so that this contribution becomes the basis for preventing it from being subject to heavy sanctions.
2. The concept of Restorative Justice will have a positive effect on society where litigants in the realm of the Criminal Code will no longer burden the courtroom with cases that must be disclosed for a long time and at high costs if restorative justice can run well.

Difficulty in uncovering structured, systematic, and massive crimes.

The term "cooperating perpetrator" in Indonesia is synonymous with "witness and suspect" often referred to as "crown witness". In the Criminal Procedure Code, the crown section is used when a suspect is charged in the prosecutor's indictment in a case (where there is more than one perpetrator) for use as a witness to provide information in other indictment files, but in practice in Indonesia the contribution of this crown witness rarely gets attention, the author did not get much information about this crown witness, whether his testimony was important for proof or whether his testimony (potentially) exonerated the defendant because " under the hand" is someone close to the defendant.

The use of crown witnesses in Indonesia has been widely criticized because it is considered to violate the suspect's right not to incriminate himself or what is said to be a violation of the principle of non-self-incrimination as Article 66 of the Criminal Procedure Code states "a suspect or defendant must not be burdened with the burden of proof." This principle implicitly prohibits the presence of a Crown Witness, because the statement that he gave was a split case that would be detrimental to the defendant himself. Even though Article 66 says so, the Criminal Procedure Code also covertly adheres to the principle of inquisition (even though the suspect is the starting point for the investigation, the suspect must not be seen as the object of the investigation, because the suspect must be placed in his position as a human being who has dignity and dignity and therefore must be assessed as a subject.

CONCLUSIONS AND SUGGESTIONS

CONCLUSION

The results of this research conclude that:

1. The role of the Justice Collaborator in uncovering structured, massive, and strategic criminal acts of corruption is very important and much needed because this can save costs, time, and energy, but the protection provided by the government through Law no. 13 of 2006 which has been revised to become Law No. 31 of 2014 concerning the Protection of Witnesses and Victims has not

provided maximum protection as it is known that there is no protection in the law regarding the threat of losing a Justice Collaborator's job. The government is serious about eradicating corruption and has issued Law No. 13 of 2006 and its improvements, especially the provisions of Article 10 paragraphs 1, 2, and 3 into Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, but this has not yet provided clarity on the umbrella formula. the maximum law that can be given to the Justice Collaborator to reveal criminal acts of corruption, because it has not protected the Justice Collaborator by knowing that there is no regulation

2. regarding protection from the threat of losing the Justice Collaborator's job, it is reflected that he does not have the concept and spirit of adequate protection from all forms of intimidation and threats of retaliation from other defendants (threats of reporting slander Article 311 paragraph (1) of the Criminal Code, unpleasant acts Article 335 paragraph (1) Criminal Code and/or Regarding defamation Article 27 paragraph (4) in conjunction with Article 28 of the ITE Law) as seen in Article 10 paragraphs 1, 2 and 3 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims as amended with Article 10 paragraphs 1 and 2 and Article 10A paragraphs 1, 2, 3, 4 and 5 of Law no. 31 of 2014, legal policy and penal policy are more dominant in the logic of punishment than the logic of protection.
3. The regulations and implementation of Justice Collaborator in Indonesia are regulated in the Witness and Victim Protection Law No. 31 of 2014 which is an amendment to Law No. 13 of 2006 concerning Witness and Victim Protection is a source of law and/legal regulations starting from his appointment to his protection as a Justice Collaborator as a space to strengthen public participation in efforts to minimize criminal acts of corruption, while the Implementation of Justice Collaborator in Indonesia is the government's determination to more serious in helping law enforcement officials speed up the uncovering of corruption cases, namely by enacting the Witness and Victim Protection Law No. 31 of 2014 which is an amendment to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims is able to unite perceptions, build coordination, bridge clashes and institutional arrogance (because each law enforcement component that is part of the criminal justice system each has a different understanding of their respective duties) in order to develop legal policy and Penal policy for the Justice Collaborator is an instrument that is effective, efficient and of interest to defendants as a new awareness in disclosing criminal acts of corruption.

SUGGESTION

1. The ideal Justice Collaborator regulation and implementation in Indonesia is to enact the Witness and Victim Protection Law No. 31 of 2014 which is an amendment to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, for this reason, this law must be implemented as a source of law and/or regulations for Justice Collaborators starting from their protection to their appointment as well as rewards and punishments, to build legal policy and penal policy for Justice Collaborators as instruments that effective, efficient, and of interest to the public as a new awareness in disclosing criminal acts of corruption, so that matters regarding Justice Collaborators should be regulated separately in a law.
2. In the future the Justice Collaborator must not become dominant and/or sovereign so that law enforcers in uncovering specific criminal cases depend on the Justice Collaborator in exchange for being given a reduced sentence, therefore in the future law enforcers must increase their knowledge, especially about Cyber Crime (crimes that use computer technology and internet networks to carry out hacking, theft, fraud, spreading viruses and other digital crimes such as Phishing/theft of personal data, Ransomware/important data stored on the device will be lost when bought and sold, Carding/using other people's credit cards, Cracking/deleting software security systems, OTP Fraud/mobile banking hacking, cyberbullying/to commit cybercrime, Content Crime/spreading hoaxes on the internet) because these crimes are currently starting to become widespread and to dismantle them requires intelligence or special skills.
3. It is necessary to establish a special law regarding Justice Collaborators that has a cultural, sociological, and humanitarian approach following the philosophy of the Indonesian nation which is friendly, polite, and deliberative as an ideal legal umbrella, so unlike currently sticking to an article in Law no. 31 of 2014 concerning Witness and Victim Protection.

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