

# Law Enforcement of Justice Collaborators in Indonesian Law System

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**Abstract.** Justice collaborators play a crucial role in revealing the main culprits in criminal cases. However, in Indonesia, the legal provisions for justice collaborators are not comprehensive and have received different responses from law enforcement agencies. The presence of justice collaborators is not explicitly regulated in the Criminal Procedure Code or other laws and regulations, except for Supreme Court Circular Letter Number 4 of 2011 prior to the issuance of Law of the Republic of Indonesia Number 31 of 2014. Unlike witnesses and victims, justice collaborators are not defined or subject to strict limitations under the Law Protecting Sanctions and Victims. While the judge cannot immediately exonerate a guilty defendant based solely on their status as a justice collaborator, the impact of their testimony may be weighed in reducing the penalty. However, the relief given to justice collaborators as a form of appreciation and protection has not been fully maximized in some cases, which may have negative consequences for other justice collaborators. This study utilizes a qualitative approach through data collected from traditional and internet literature searches, and highlights the need for comprehensive regulations and consistent implementation of justice collaborator provisions in the Indonesian legal system.

**Keywords :** Justice collaborator, Law Enforcement, Criminal

## 1 Introduction

The problems faced so far in uncovering a crime, one of which is regarding the existence of justice collaborators who receive less attention, because in criminal law, both formal and material, very little attention is paid to protection against it [1]. This is not in accordance with the principle of equality before the law, namely the equal treatment of everyone before the law without discriminating in treatment. The protection of justice collaborators has not drastically changed the views of the Indonesian people regarding the meaning of their existence. The perspective of the community in several types of cases including law enforcers regarding justice collaborators is even still wrong.

Justice collaborators in a number of cases often become victims because of certain things, maybe because of their position or maybe they are afraid of their superiors who should be held accountable for this matter or they have been threatened with certain reasons so as not to drag the people involved in it[2]. Many justice collaborators also received the same sentence as other suspects or defendants. This means that its role in exposing crimes more broadly, deeper, more quickly is not taken into account by law enforcers, especially the regulations governing them.[3] The role of the witness as a justice collaborator is very important in the context of the process of eradicating criminal acts, because justice collaborators are used to uncover the bigger brains of the perpetrators so that the crime can be completed and does not stop only at the perpetrator who plays a minimal role in the crime.

The fear of becoming a witness or being a reporter or revealer of alleged criminal acts and being willing to cooperate with law enforcement officials to uncover crimes (justice collaborators) is indeed not a worry or an unreasonable fear.[4] The position of witnesses is very important in a judicial process, because witnesses have based on what they see and experience to make it easier to prove the guilt of suspects and defendants.

Disclosure of a crime that starts from the investigation stage to evidence in court, the role of witnesses is highly expected and becomes a determining factor in the success of disclosing a crime. The importance of witnesses in criminal acts can be seen from the number of cases that were not resolved during the investigation stage and which later acquitted the defendant from the demands of the public prosecutor due to a lack of witness evidence.

Witnesses along with other evidence will help the judge to make a fair and objective decision based on the legal facts presented. Witnesses in a criminal justice process are the key to obtaining material truth. Therefore, witnesses must be able to provide truthful information. The formulation of the problem in this study are:

1. How are justice collaborators regulated in the Indonesian legal system?
2. What is the practice of law enforcement against justice collaborators?

## **2 Method**

This type of research is library research. Research conducted at a library is research that uses secondary data from the literature as the main source of information and involves searching for laws and other relevant books.[5]. This research uses library research because it only deals directly with sources that are already in the library or ready-to-use data, as well as secondary data. It does not deal directly with field data or through eyewitnesses in the form of events. used.

The approach used in this study is a normative approach [6]. The normative approach is a literature-based approach, which focuses on the analysis of primary legal materials and secondary legal materials. This study uses a normative approach because this study aims to provide a detailed explanation that is systematic, corrects and clarifies a rule of law governing a particular field of law[7].

Secondary data were the source for the research's data. Data sources that indirectly supply information to data gatherers, such as through other individuals or documents, are known as secondary data sources. Because secondary material is easily accessible in written form in books, scholarly journals, and other written sources, it is used as the primary reference in this study.

Conventional and online literature searches served as the method for gathering data for this study. Traditional literary searches are conducted by searching the library's collection, buying books and journals, and participating in scientific events (seminars). A search engine is used to do online searches on the internet. Because it is helpful for establishing a theoretical foundation by studying and researching books, rules and regulations, documents, reports, archives, and other research findings both printed and electronic relevant to the object of study, this study uses traditional and online library search strategies.

The data analysis method used in this research is qualitative [8]. The goal of qualitative data analysis is to comprehend phenomena relating to what research subjects experience, such as behavior, perceptions, motivations, actions, and others, holistically and through verbal and linguistic descriptions, in a specific setting that is natural and with the aid of natural methods. Because the data will be presented in a narrative-descriptive style rather than as figures or numbers, this study uses qualitative data analysis.

## **3 Discussion**

### **3.1 Justice Collaborator Arrangements in the Indonesian Legal System**

The term justice collaborator or collaborator with justice or *pinti* is something new in Indonesia. This term is not a legal term because it cannot be found in the Criminal Procedure Code. This term comes from a country that adheres to the Anglo Saxon legal system, namely the United States, but this term has been used in Indonesian legal practice.

The problem faced in Indonesia today is that justice collaborator arrangements have not been regulated in the Criminal Procedure Code[9]. Only an offender's rights in the criminal justice system are governed by the Criminal Procedure Code's provisions. The Supreme Court Circular Letter Number 4 of 2011 about Treatment for Whistleblowers and Witnesses Who Cooperate (Justice Collaborators) in Certain Criminal Cases is the only document to date that expressly mentions the regulation pertaining to justice collaborators.[10].

In Indonesia's positive law, the presence of justice collaborators is still not given comprehensive arrangements, so that the existence of justice collaborators is responded to differently by law enforcers[11]. Explicitly, justice collaborators are basically not regulated in the Criminal Procedure Code and are not found in other laws and regulations [12]. The current criminal law policies come from both international and national documents that provide arrangements related to justice collaborators, namely :

#### **1. Criminal Procedure Code**

The Criminal Procedure Code does not specifically regulate witnesses to perpetrators who cooperate or justice collaborators, this is reasonable because the Criminal Procedure Code is an old and ancient Dutch heritage law so there is no regulation of new terms such as justice collaborator. In the Criminal Procedure Code, the term crown witness is used. Where in Article 142 and Article 168 letter a KUHAP implicitly regulates crown witnesses. If examined implicitly, the editorial provision of Article 168 letter b of the Criminal Procedure Code which states "...or those who are together as the accused", at a glance, regulates the crown witness. At a glance, crown witnesses and justice collaborators have something in common or are even considered to be the same thing where a perpetrator gives testimony in a trial.

#### **2. *The 2003 United Nations Convention Against Corruption (UNCAC) which was ratified into the Law of the Republic of Indonesia Number 7 of 2006 concerning the UN Convention Against Corruption***

The instrument in this ratified law serves as the context for the phrase "justice collaborator" to appear in Indonesia's criminal justice system. In Article 37 Paragraphs (2) and (3) of the 2003 United Nations Convention Against Corruption (UNCAC), which states that collaboration with law enforcement officers, are agreements relating to justice collaborators. 2) In appropriate circumstances, each State Party shall consider allowing defendants who are able to cooperate in significant ways in the investigation or prosecution of an offense established in accordance with this Convention to receive a lesser punishment. 3) Each State Party shall take into consideration the possibility of granting immunity from prosecution to defendants who are capable of cooperating in significant ways in the investigation or prosecution of offenses established in accordance with this Convention, in accordance with the fundamental principles of its domestic law. Although the phrase "justice collaborator" is not specifically mentioned in this text, it has been defined in terms of the protection of justice collaborators.

#### **3. *The United Nations Convention Against Transnational Organized Crime (UNCATOC) which was ratified into Law of the Republic of Indonesia Number 5 of 2009 concerning the UN Convention Against Transnational Organized Crime***

The terms "justice collaborator" are defined under this convention's Article 26 Paragraphs (2) and (3). According to paragraph (2), each state party is required to take into account, under the right conditions, reducing the sentence of an accused who offers effective assistance in the investigation or prosecution of crimes covered by this convention. Each state party is required to evaluate, in accordance with the fundamental rules of its domestic law, the possibility of extending immunity from prosecution to a person who actively assists in the investigation or prosecution of crimes covered by this agreement, according to paragraph (3).

**4. *Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crimes***

Article 42 Paragraph (1) of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law, which regulates the awarding of awards or rewards to parties who cooperate or assist in eradicating corruption, contains implicit statutory regulations regarding justice collaborators. According to the article, the government honors citizens who have supported initiatives to thwart, eliminate, or expose corrupt practices.

**5. *Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims***

Despite the fact that the Law of the Republic of Indonesia Number 31 of 2014 regulates the protection of justice collaborators, the law only addresses special handling of justice collaborators who are separated from suspects, defendants, and/or convicts whose criminal acts have been revealed, as well as compensation for testimony[13]. By recommending to the public prosecutor in writing that mitigating criminal penalties be included in their charges, the Witness and Victim Protection Agency can provide protection by rewarding justice partners and moderating criminal convictions. If the justice collaborator is a prisoner, demanding a suspended sentence as well as providing extra pardons and other prisoner privileges in accordance with relevant regulations.

**6. *Government Regulation Number 99 of 2012 concerning the Second Amendment to Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Families***

According to this government legislation, anyone found guilty of corruption will have their sentences reduced if they are prepared to work with law enforcement to find out what crimes they have done. A suspect who has not yet received a judicial verdict can be classified as a justice collaborator if one looks at the concept of a justice collaborator more closely. A justice collaborator is not a person who has been found guilty. The perpetrator cannot be considered a justice collaborator if the court's ruling was legally binding, the punishment was carried out, and he did not submit himself as a justice collaborator. However, he may be eligible for remission under Article 34 of the Regulations if he goes on to assist law enforcement in the future. 2012 Government Number 99.

**7. *Circular Letter of the Supreme Court Number 4 of 2011 concerning Treatment for Whistleblowers and Witness Collaborators in Certain Crime Cases***

The Supreme Court Circular Number 4 of 2011 offers recommendations for figuring out what constitutes a justice collaborator based on Article 9 letters (a) and (b). First, the offender in question acknowledges to committing the offense but claims not to have been the primary offender. Second, the offender offers information as a witness in the legal procedure. Second, the public prosecutor in charge of his case stated that he had supplied very important information and

evidence to enable investigators and/or public prosecutors to successfully ascertain the crime in question, identify additional players who played a larger role, and/or recover the stolen property.

**8. *Joint Rules of Law Enforcement Officials and Witness and Victim Protection Agencies regarding Protection for Complainants, Reporting Witnesses and Collaborating Witnesses***

Joint Regulation Number M.HH-11.HM.03.02.th of the Indonesian Witness and Victim Protection Agency, the Indonesian National Police Chief, the Indonesian Attorney General, the Indonesian Corruption Eradication Commission, and the Minister of Law and Human Rights of the Republic of Indonesia. This is intended to to equalize views and perceptions as well as facilitate the implementation of the duties of law enforcement officials in uncovering serious and/or organized criminal acts and provide guidelines for law enforcers in coordinating and cooperating in the field of providing protection for reporters, reporting witnesses and witness witnesses who cooperate in criminal cases . The purpose of this joint regulation is to realize cooperation and synergy between law enforcement officials in dealing with serious and organized criminal acts through efforts to obtain information from the public who are willing to become reporters, reporting witnesses and/or witness witnesses who cooperate in criminal cases, creating a sense of security both from physical and psychological techniques and giving awards to members of the public who know about the occurrence or impending occurrence of a serious crime and/or are organized to report or provide information to law enforcement officials, uncover the crime and assist in returning the proceeds of crime effectively.

**3.2 Law Enforcement Practices Against Justice Collaborators**

The first practicing justice collaborator in Indonesia was Agus Condro Prayitno, a former member of the People's Representative Council of the PDI-Perjuangan faction for the 1999-2004 period in the case of traveler's checks totaling Rp. 500 million in the election of the Senior Deputy Governor of Bank Indonesia, namely Miranda Swaray Gultom in 1994 which ensnared approximately 26 members for the 1999-2004 term. The provision of traveler's checks was related to Miranda Goeltom's winning bid for the election of the senior deputy governor of Bank Indonesia in 2004. Agus Condro also specified the name of the bank where he cashed the check complete with documents for buying a car and this information was traced by the Center for Financial Transaction Reports and Analysis.

In addition to the award in the form of granting additional remissions and conditional release to the justice collaborator in the corruption case received by Agus Condro, awards were also received by Mindo Rosalina Manulang and Sukotjo S. Bambang. The award in 2013 to a justice collaborator was given to Kosasih Abbas, a convict in the alleged solar home system corruption case at the Ministry of Energy and Mineral Resources who received an award in the form of parole. Apart from Kosasih Abbas, there is also Vincentus Amin Sutanto, a suspect in tax fraud. In addition, the award was given to Thomas Claudius Ali Junaidi in decision Number 920K/Pid.sus/2013, which handed down a light sentence against Thomas Claudius Ali Junaidi.

On Thursday 16 June 2011, through a decision number 14/PID.B/TPK/2011/PN.JKT.PST, the corruption court sentenced Agus Condro to 1 (one) year and 6 (six) months in prison. The panel of judges stated that Agus Condro was proven to have violated Article 11 of the Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption Crimes. As a state administrator, Agus Condro was proven to have accepted gifts or promises because of his position as a member of the finance and banking commission for the 1999-2004 period. The prize was in the form of traveler's checks, each of which received 10 pieces of Bank International Indonesia checks with a nominal value of Rp. 500 million.

Supported by evidence and instructions and having complied with the evidence contained in Article 184 Paragraph (1) of the Criminal Procedure Code, the judge is of the opinion that Agus Condro and his friends have been legally and convincingly proven guilty in this case and can be sentenced. However, the judge should also consider the good intentions of the defendant Agus Condro who admitted all his actions and cooperated with law enforcement officials to make it easier for law enforcement officials to identify other perpetrators. In accordance with the Supreme Court Circular Number 4 of 2011, the judge is expected to consider this matter and include it in the decision as a mitigating factor for the defendant.

Based on the description above, if applied to the Agus Condro case, in which Agus Condro played the role of defendant, witness as well as a reporter for granting a travel check at the election of the Senior Deputy Governor of Bank Indonesia who admitted his guilt, returned the proceeds of his crime, did not run away and followed all the legal processes very easily law enforcement officials and judges to reach all perpetrators of these crimes. Therefore the panel of judges in the trial tried to provide rewards related to punishment.

Therefore, in the judge's decision, the role of the justice collaborator was considered even though Agus Condro was a defendant, moreover the judge gave an assessment that the defendant Agus Condro was considered to have nothing aggravating. The judge's consideration in terms of mitigating the defendant Agus Condro shows that the role of a justice collaborator is very important in assisting law enforcement officials in uncovering a crime which is classified as an extraordinary and organized crime such as corruption.

With the help of Agus Condro, this case, which was initially unheard of by law enforcement officials, has now been uncovered one by one and the perpetrators have been caught and tried in accordance with the applicable laws and regulations. Without information from the defendant Agus Condro, it is possible that this case would take a long time to process and might even be stopped as is the case with many corruption cases where up to now it is not clear what the continuation of the case will be considering that corruption is an organized crime and the perpetrators are intellectuals who have intelligence and higher education. The defendant Agus Condro also returned all the proceeds from the crime he received, thereby reducing state losses due to corruption.

Regarding the status of the defendant as a justice collaborator, the judge adhered to the provisions of the Supreme Court Circular Number 4 of 2011 which stated that the judge could impose the lightest prison sentence among other defendants who were proven guilty.

According to the provisions of Article 2 of Law Number 31 of 2014 concerning Protection of Witnesses and Victims, which states that a witness who is also a defendant in the same case cannot be acquitted of charges, the judge cannot immediately acquit the defendant in this case even though he is a cooperating witness. If he is legally and unquestionably guilty of the crime, the court may consider the impact of his evidence in reducing the punishment he or she imposes.

Particularly in the Agus Condro case, several parties thought that the sentence given by the judge was too harsh. This is because Agus Condro is a witness to the perpetrators who helped law enforcement officials or justice collaborators so that a greater award should be given than just a reduction in the sentence of 3 (three) months as given by the judge.

Another case example is what happened to Nazaruddin who was sentenced to imprisonment for 13 (thirteen) years for 2 (two) cases. The first Nazaruddin case was proven by accepting bribes in the amount of Rp. 4.6 billion, given by M. El Idri as Marketing Manager of PT. Ambassador of the Beautiful House. For the first case, Nazaruddin received a sentence of 7 (seven) years in prison and a fine of Rp. 300 million. Nazaruddin's next case was proven for gratuities and money laundering. Nazaruddin was then sentenced to 6 (six) years in prison and a fine of one billion

rupiah. Of the two cases, Nazaruddin was sentenced to 13 (thirteen) years in prison and a fine of Rp. 1.3 billion rupiah.

On June 14 2020, Nazaruddin was released from the Sukamiskin Penitentiary because he received 45 months 120 days (4 years 1 month) in remission. The remission was obtained thanks to his role as a justice collaborator who disclosed important information, the remission he obtained was responded to by the Ministry of Law and Human Rights in accordance with the provisions in Government Regulation Number 99 of 2012. Nazaruddin's appointment as a justice collaborator was based on letter Number R-2250/55/06/ 2014 dated 9 June 2014 regarding a statement on behalf of Muhammad Nazaruddin and Letter Number R.2576/55/06/2017 dated 21 June 2017 regarding a request for information on having collaborated with law enforcement on behalf of Mohammad Nazaruddin.

Until now the state has not given maximum appreciation and protection to justice collaborators in Indonesia, this can be seen from the justice collaborators also receiving the same punishment as the other suspects. That is, its role in uncovering crimes more broadly, deeper, more quickly is simply not taken into account by law enforcers, especially the regulations governing it.

It is feared that Agus Condro's sentence will have a negative effect on other justice collaborators in cases of human rights violations, narcotics, terrorism, human trafficking, illegal logging or other cases. The public will see the decision as a negative message because it turns out that both the complainant and the complainant will receive the same punishment. Even though the other perpetrators did not even admit their actions even though the evidence had shown the truth at trial, some of the perpetrators were also unwilling to return the state assets they had obtained by criminal means.

The verdict against Agus Condro should not have taken place if law enforcement officials had shown their side with people who wanted to work together to uncover corruption cases. The partiality of law enforcers will encourage others to do the same as what Agus Condro did.

Legal protection for justice collaborators from the perspective of existing formulations and practices has not provided clarity in the position of how a person is placed as a justice collaborator. This means that, from the perspective of the Indonesian criminal justice system, it is not yet clear where a person can be called a justice collaborator, whether at the level of investigation, prosecution, justice, or whether justice collaborators at all of these levels are possible.

Protection of justice collaborators in the future will be even more important. Along with the demands for law enforcement and human rights, up to the eradication of the mafia which is being intensively carried out by various groups, the existence of a justice collaborator will be even more significant, providing rewards for justice collaborators with exemption from criminal responsibility or a reduction in sentences is something that must be considered for the future so that In the future, anyone can eventually play the role of a justice collaborator if he or she is willing and able to report or submit allegations of organized crime or crime. The most important thing is to emphasize in what cases witnesses and victims cannot be prosecuted both criminally and civilly against reporting witnesses for reports, testimonies that will be, are being, or have been given.

Even though from a regulatory standpoint it has regulated guarantees of awarding in the form of relief from imposition of criminal sanctions for justice collaborators, the fact is that in several cases of corruption examined in court criminal acts of corruption, relief from imposition of criminal sanctions is still being neglected. An example can be seen in the case of procuring a solar home system and the bribery case in the recommendation of exchanging forest areas in Bogor Regency.

#### **4 Conclusion**

Research findings and discussion can lead to the following conclusions: Legislation enforcement has reacted differently to the existence of justice collaborators since full preparations for this issue have not yet been made in Indonesian positive law. Justice collaborators aren't specifically covered under the Criminal Procedure Code or any other laws or regulations. Only the Supreme Court Circular Letter Number 4 of 2011 explicitly addressed the existence of justice collaborators prior to the passage of Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 13 of 2006 Concerning Protection of Witnesses and Victims. A justice collaborator is not defined or subject to rigorous limitations under the Law Protecting Sanctions and Victims; rather, it solely applies to witnesses and reports of illegal crimes.

Second, even when the prisoner is a justice collaborator, the court cannot immediately exonerate him if he is found legally and convincingly guilty; nonetheless, the judge may consider the defendant's evidence when reducing the penalty imposed. The protection and appreciation relief provided thus far has not been fully utilized, and in certain cases, the protection against the implementation of criminal sanctions has been disregarded. This could harm other justice-related collaborators, it is feared.

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