

Legal Reconstruction in Determining a Justice Collaborator in Corruption Crime Cases in Indonesia



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ABSTRACT: This research aims to analyze the regulations regarding policies for determining witnesses and reconstructing policies for determining justice collaborators in corruption cases. The type of research used is normative, using an approach to laws and other regulations. The nature of the research is descriptive, using secondary data. Research analysis was carried out qualitatively using a deductive method of conclusion. This research concludes that, in practice, various regulations regulate the policy of determining cooperating witnesses or justice collaborators in criminal acts of corruption. This regulation began with laws and then developed into Circulars and Joint Regulations from law enforcement agencies. Due to differences in rules, the policy for setting new standards had to be changed. This standard must legally bind recognition or recognition and the same understanding or perception regarding the status of cooperating perpetrator witnesses or justice collaborators from the examination stage at the investigation level to the examination stage at the court level, even to the examination stage at the court level.

KEYWORDS: Justice Collaborator, Corruption, Law Enforcement, Justice.

INTRODUCTION

The existence of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is a concrete realization of legal policy or legal politics. It is related to law enforcement in eradicating criminal acts of corruption. In addition, the establishment of Law Number 30 of 2002 concerning the Corruption Eradication Commission of the Republic of Indonesia as amended by Law Number 10 of 2015 concerning Stipulation of Government Regulations instead of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission of the Republic of Indonesia, and most recently it has undergone a second amendment with Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission of the Republic of Indonesia, as well as the actual implementation of legal policy or legal politics through law enforcement to combat criminal acts of corruption in Indonesia (Chandra & Sriwidodo, 2023). Normatively, the Corruption Eradication Commission is a state institution that carries out its duties and authority independently and is accessible from the influence of any power. The aim is to increase the effectiveness of efforts to eradicate criminal acts of corruption.

After laws and law enforcement institutions such as the Corruption Eradication Commission of the Republic of Indonesia and the Special Court for Corruption Crimes were established, many problems arose related to the law enforcement process for corruption crimes in Indonesia (Bambang et al., 2017). Several problems related to the law enforcement process for criminal acts of corruption include discriminatory policies in resolving cases of criminal acts of corruption, different levels of punishment for perpetrators of criminal acts of corruption, relatively light prison sentences for perpetrators of criminal acts of corruption, and the small number of companies investigated and prosecuted as a perpetrator in a criminal corruption case (Widowaty et al., 2023).

Other problems that often arise in the law enforcement process in eradicating criminal acts of corruption are problems related to problems that arise in determining status as a witness to a cooperating perpetrator or justice collaborator in resolving a criminal act of corruption. This is based on accurate and practical experience where the author provides legal assistance and assistance to people involved in criminal acts of corruption with the status of suspects or defendants and then designated as cooperating witnesses or justice collaborators in cases of criminal acts of corruption (Thalib et al., 2017). Normatively, what is meant by a cooperating witness or justice collaborator is a suspect, defendant, or convict.

There are several problems caused by misunderstandings or policy disagreements regarding the designation of cooperating perpetrator witnesses or cooperating perpetrator witnesses. The benefits of determining a cooperating perpetrator witness or a cooperating perpetrator witness certainly create legal uncertainty and do not benefit the party designated as the defending perpetrator witness (Sholecha et al., 2023). Therefore, policies governing the determination of cooperating witnesses or justice collaborators

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must be unified. This includes reconstructing policies governing appointing cooperating perpetrator witnesses or justice collaborators to provide legal certainty and equal benefits for all parties designated as cooperating perpetrator witnesses or justice collaborators (Haykal, 2023).

There are several problems caused by unequal understanding or policy disagreements regarding determining the status of cooperating perpetrator witnesses or cooperating perpetrator witnesses. Legal uncertainty arises, and the determination of a cooperating perpetrator witness or a cooperating perpetrator witness does not provide benefits or advantages for the party designated as a perpetrator witness (Romdoni & Bakar, 2022). Supposedly, the problems mentioned above related to determining cooperating witnesses or collaborative witnesses should not arise if the legal politics of enforcing criminal acts of corruption are carried out by law enforcement officials or institutions guided by the principles of formal criminal law such as the principle of coordination as part of the system and integrated criminal enforcement (Aryani & Triwanto, 2020).

The integrated criminal justice system mainly consists of policy construction and policy implementation construction owned by each law enforcement apparatus or law enforcement agency. This integration is critical to eliminate or at least minimize the egoism of policies and the main tasks and functions or main tasks of law enforcement officials. Suppose this is related to the emergence of differences or inconsistencies in the implementation and construction of laws to determine defendants or suspects as cooperating witnesses or collaborative prosecutors, starting from the level of examination at the investigation to the examination at trial. In that case, this is an example of the dominance of institutional egoism. Therefore, it is necessary to carry out reconstruction related to the unification of policies that regulate the determination of cooperating perpetrator witnesses or cooperating perpetrator witnesses, including reconstruction of the implementation of policies that regulate the determination of cooperating perpetrator witnesses or cooperating perpetrator witnesses to provide legal certainty and benefits. The same is true for all parties designated as cooperating perpetrator witnesses or cooperating perpetrator witnesses.

METHOD

The research method used in this research is a normative legal research type using secondary data obtained by conducting document studies. The secondary data that will be used is in the form of statutory regulations, research, papers, documents, and other literature books related to material regarding policies regarding the determination of cooperating witnesses (Justice Collaborators) in corruption cases. All secondary data can be reclassified based on type into primary, secondary, and tertiary legal materials.

RESULTS AND DISCUSSION

Regulations regarding the Policy for Determining Justice Collaborators in Current Corruption Crime Cases

The policies governing eradicating criminal acts of corruption are the same as those governing cooperating witnesses or justice collaborators. According to researchers, a cooperating witness, also known as a cooperating witness, is a person who commits a criminal act but has the opportunity and clothing as a witness to provide information to law enforcement about criminal acts involving other parties, both individuals and institutions, institutions, companies, or organization carried out systematically (Thalib et al., 2017). Thus, cooperating perpetrators, also known as collaborative legal witnesses, have a vital role and position in how law enforcement officials reveal criminal acts.

In particular and unique crimes, cooperating perpetrator witnesses or legal attorneys usually appear. This can be related to corruption, narcotics, money laundering, human trafficking, taxation, finance, or other criminal acts involving more than one party and are carried out more neatly, systematically, and structured. Indonesian legislation has many regulations governing the presence of cooperating or collaborative witnesses (Namang et al., 2023). Starting from basic regulations in the form of Laws to additional regulations such as Government Regulations, Joint Regulations, Ministerial Regulations, and even Circular Letters. The requirements for cooperating perpetrator witnesses or collaborative lawyers are as follows:

1. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Researchers think that Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes does not mention terms and definitions regarding witness to the perpetrator who cooperates or justice collaborator. On the other hand, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes only regulates Reporting Witnesses or whistle-blowers. Which is part of a form of community participation in the legal politics of eradicating criminal acts of corruption;
2. Government Regulation Number 71 of 2000 concerning Procedures for Implementing Community Participation and Giving Awards in the Prevention and Eradication of Corruption Crimes as implementing regulations for Law Number 31 of 1999 concerning Eradication of Corruption Crimes. This government regulation is a follow-up regulation mandated by Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes;

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3. Law Number 7 of 2006 concerning the 2003 United Nations Convention Against Corruption Ratification. The legal politics of the formation and regulation of cooperating perpetrator witnesses or justice collaborators began with the ratification of the 2003 United Nations Convention Against Corruption through Law Number 7 2006 concerning Ratification of the 2003 United Nations Convention Against Corruption. This ratification is one method by which international legal norms governing the eradication of corruption can be included in Indonesia's legal system;
4. Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. In subsequent developments, Law Number 13 of 2004 concerning the Protection of Witnesses and Victims was amended in 2014;
5. Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011 concerning the Treatment of Whistleblowers and Justice Collaborators in Criminal Acts. The provisions of number 9 of the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011 concerning the Treatment of Criminal Whistleblowers and Justice Collaborators in Crimes explain the guidelines that can be used as standard benchmarks for judges. To be able to assess and determine someone as a cooperating perpetrator or justice collaborator, namely as follows: a) The defendant presented in the trial is one of the perpetrators of a particular criminal act as regulated in provision number 1 in Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of the Year 2011 concerning Treatment for Whistleblowers and Justice Collaborators in Criminal Acts. What is meant by certain criminal acts are corruption crimes, narcotics crimes, money laundering crimes, terrorism crimes, human trafficking crimes, or certain other criminal acts that are organized and cause severe problems and threats to stability and society so that can destroy institutions and values of democracy, ethics, and justice, including endangering sustainable development processes and the supremacy of law; b) The defendant is willing to admit to the crime he committed; c) The defendant is not the main perpetrator in the crime; d) The defendant gives his statement as a witness in another case in the judicial process; e) The defendant provides significant information and evidence and can help investigators and the public prosecutor to be able to uncover the crime effectively, including to be able to reveal other perpetrators who have a more significant and more valuable role and can also help in the process return of assets obtained from the proceeds of criminal acts;
6. Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Attorney General of the Republic of Indonesia Head of the National Police of the Republic of Indonesia Corruption Eradication Commission of the Republic of Indonesia Chair of the Witness and Victim Protection Agency of the Republic of Indonesia Number 1 of 2011 concerning Protection for Whistleblowers, Reporting Witnesses and Perpetrator Witnesses Cooperating states that what is meant by Cooperating Actor Witness is a witness who is also the perpetrator of a criminal act who is willing to assist law enforcement officials to uncover a criminal act or the impending occurrence of a criminal act to return the assets or proceeds of a criminal act to the state by providing information to law enforcement officials and provide testimony in the judicial process;
7. Government Regulation Number 99 of 2012 concerning the Second Amendment to Government Regulation Number 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Correctional Inmates;
8. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2004 concerning the Protection of Witnesses and Victims. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims has regulated and provided the term Perpetrator Witness to refer to perpetrator witnesses who collaborate or justice collaborators. Witness Perpetrator was not previously regulated in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. Apart from regulating the operational definition of Witness Perpetrator, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims also regulates the affirmation of rights obtained by Witness Perpetrator, namely as follows: a) Witness Perpetrator does not can be legally prosecuted both criminally and civilly for the information he has provided unless the information provided is not based on good faith; b) If there is a legal claim against the Perpetrator Witness for information or testimony that will be or is being or has been given by him, the legal claim must be postponed until the court has decided the information or testimony he has given and has obtained permanent legal force (Lintang & Nugroho, 2021; Setiyono et al., 2023).

In this Law, the rules relating to cooperating witnesses or justice collaborators are also regulated in the provisions of Article 10, paragraph (2) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. Explains that a witness who is also a suspect in a similar case cannot be released from criminal charges if legally and convincingly proven guilty. However, his testimony can be taken into consideration by the judge in mitigating the sentence he will impose (Asriyani, 2018). The researcher provides a critical analysis or note related to the formation of statutory regulations governing collaborating perpetrator witnesses or justice collaborators as previously explained above, namely as follows:

- a. Some of these regulations do not provide a clear and firm definition regarding cooperating witnesses or justice collaborators. The existence of a clear and firm definition will certainly provide certainty regarding the limitations and criteria used by law enforcement officials or institutions in assessing perpetrators who can be declared as cooperating witnesses or justice collaborators;

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- b. There are differences in operational definitions regarding cooperating witnesses or justice collaborators, namely as regulated and formulated in the provisions of Article 1 number 2 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2004 concerning Protection of Witnesses and Victims and in the provisions of Article 1 number 3 Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Attorney General of the Republic of Indonesia Head of the National Police of the Republic of Indonesia Corruption Eradication Commission of the Republic of Indonesia Chairman of the Witness and Victim Protection Agency of the Republic of Indonesia;
- c. If you look at the description of the operational definition regarding cooperating perpetrator witnesses or justice collaborators, the definition of cooperating perpetrator witnesses or justice collaborators is contained in the provisions of Article 1 point 3 of the Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Attorney General of the Republic of Indonesia Head of the National Police of the Republic Indonesia Corruption Eradication Commission of the Republic of Indonesia Chair of the Republic of Indonesia Witness and Victim Protection Agency;
- d. The mention of the term in the provisions of Article 1 number 2 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2004 concerning the Protection of Witnesses and Victims is limited to Witness Perpetrators only. Meanwhile, in the provisions of Article 1 point 3 of the Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Head of the National Police of the Republic of Indonesia, Corruption Eradication Commission of the Republic of Indonesia, Chair of the Republic of Indonesia Witness and Victim Protection Agency;
- e. When viewed from the perspective of the level of types of statutory regulations, the position of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2004 concerning the Protection of Witnesses and Victims is higher than the position of the Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Attorney Agung Republic of Indonesia Head of the National Police of the Republic of Indonesia Corruption Eradication Commission of the Republic of Indonesia Chairman of the Witness and Victim Protection Agency of the Republic of Indonesia. Therefore, if other statutory regulations regulate cooperating witnesses or justice collaborators, they must refer to and be guided by operational terms and definitions as regulated in the provisions of Article 1 number 2 of Law Number 31 of 2014 concerning Amendments to the Law. -Law Number 13 of 2004 concerning the Protection of Witnesses and Victims;
- f. The absence of a comprehensive, clear, and firm definition also has an impact on the diversity or lack of unification of definitions which will serve as a guide or reference for other regulations, both in the form of laws and regulations under the law;
- g. There is desynchronization and disharmonization of the rules governing technical criteria used as joint guidelines between law enforcers, including the courts, to determine the status of a suspect or defendant as a cooperating witness or justice collaborator. Therefore, based on the principle of certainty, ideally, a separate legal norm must be formed that regulates uniformity and standardization of criteria that can be used as a standard guideline to determine someone with the status of a suspect or defendant as a cooperating witness or justice collaborator (Setiyono et al., 2023).

Reconstructing the Policy for Determining Justice Collaborators in Corruption Crime Cases

As explained in the previous subtheme, the author provides several critical analyses or notes related to forming legislative regulations governing cooperating witnesses or cooperating perpetrator witnesses (Gunarto et al., 2023). Researchers think the policy governing appointing cooperating witnesses or collaborators of justice must be reconstructed. For example, the intended design for regulatory policy reconstruction is as follows:

- a. Changing the same terms and phrases to become standards for all law enforcers, including all decision documents issued by legal institutions, especially those relating to the determination of cooperating perpetrator witnesses;
- b. Changing the standards governing the requirements for being designated as a cooperating perpetrator witness so that there are no longer different or ambiguous understandings about who can be designated as a cooperating perpetrator witness;
- c. Reformulate all technical standards stipulated by law in the form of regulations, internal institutional circulars, or regulations stipulated by each law enforcement agency. The aim is to ensure that the standards and understanding held by each law enforcement agency regarding determining legal status as a witness to a perpetrator work together. This expectation is in line with the principle of legal certainty that a person who is designated as a witness to a perpetrator who cooperates from the beginning of the investigation process must be acknowledged and recognized for his or her status as a witness to a perpetrator who cooperates up to the court level and also during the process of executing the court decision;
- d. Make regulations that strictly regulate the special rights for witnesses to perpetrators who cooperate in serving their sentences in correctional institutions. In addition to these special rights, cooperating perpetrator witnesses have the right to obtain remission and parole without being required to fulfill requirements that may cause difficulties or obstacles for them (Khoirunnisa & Jubaidi, 2023; Setiyono et al., 2023).

The aim of the policy reconstruction for the formation of appropriate legal norms is to ensure that recognition or recognition, as well as the same legal understanding or perception regarding the status of cooperating witnesses or justice

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collaborators, applies from the investigation stage to the examination stage at the court level, even to the execution process to provide the principle of legal certainty for the Defendant:

- a. Collaborate actively and consistently between law enforcement agencies, especially to reach agreement on standards for determining defendants or suspects as collaborative witnesses in cases of criminal acts of corruption (Ma'ruf, 2019);
- b. Carry out intensive and continuous cooperation between law enforcement agencies to enable unconditional acceptance of legal products related to determining the status of suspects or defendants as witnesses to perpetrators in criminal acts of corruption. This means that other law enforcement agencies must receive a Decree that determines a suspect or Defendant as a witness to a perpetrator who cooperates in a criminal corruption case by sacrificing personal and cultural interests (Purwadi, 2021);
- c. Carry out robust and consistent cooperation between law enforcement agencies to provide beneficial treatment or care that relieves the Defendant or suspect who has been designated as a witness to the perpetrator. This means that if a defendant or suspect is named as a cooperating witness and is suspected of being involved in another corruption case that is the same and structured systematically and consistently as the main corruption case, then the cooperating witness may not be able to receive his new legal status as a suspect. Suspects or defendants who are designated as cooperating witnesses are also committed to assisting law enforcement institutions or officials in uncovering cases of criminal acts of corruption thoroughly and clearly with all the associated risks (Ardi et al., 2023);
- d. Carry out intense and continuous cooperation between law enforcement agencies, including correctional institutions, to monitor and pay attention to convicts who were previously suspects or defendants designated as cooperating witnesses or legal collaboration witnesses in cases of criminal acts of corruption. This also includes providing facilities for convicts, previous suspects, or defendants appointed as collaborative legal witnesses in cases (Sriwidodo, 2016). This is the principle of benefits expected from collaborative perpetrator witnesses.

Based on the same understanding by all law enforcement agencies in an integrated criminal justice system, the Reconstruction of policy implementation in determining the status of cooperating witnesses or justice collaborators aims to provide juridical and social benefits for defendants or convicts designated as perpetrators witnesses.

CONCLUSION

The dynamics regarding the existence of cooperating witnesses or justice collaborators in Indonesia are regulated by various statutory regulations. Starting from the rules of statutory regulations in the form of Laws to regulations under Law such as Government Regulations, Joint Regulations, Ministerial Regulations, and even Circular Letters. There is a need to reconstruct regulatory policies regarding the determination of cooperating witnesses or justice collaborators in criminal acts of corruption and the Reconstruction of policies for implementing the determination of cooperating witnesses (justice collaborators) in criminal acts of corruption by law enforcement institutions in Indonesia. The Reconstruction of the policy for the formation of appropriate legal norms aims to regulate recognition or recognition and the same legal understanding or perception regarding the determination of the status of a cooperating witness or justice collaborator, which applies from the examination stage to the investigation level to the examination stage at the court level and even up to by executing order to create the principle of legal certainty for the Defendant who is designated as a cooperating witness or justice collaborator.

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