

## **POLICY RECONSTRUCTION TOWARDS JUSTICE COLLABORATOR DETERMINATION OF CORRUPTION CASES BASED ON LEGAL CERTAINTY AND BENEFITS ASPECTS**

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### **ABSTRACT**

One of the problems that sometimes arises in the law enforcement process in the eradication of corruption crimes is the problem related to determining the status as a witness for cooperating perpetrators or justice collaborators in solving a corruption case. The existence of several problems stemming from the inequality of understanding or not having unification of policies in determining the status of the perpetrator as a cooperating perpetrator witness or justice collaborator along with the benefits arising from the determination of the cooperating perpetrator witness or justice collaborator certainly creates legal uncertainty and also does not provide benefits or utility for the party who is determined as a cooperating perpetrator witness or justice collaborator. The reconstruction of the policy of establishing appropriate legal norms aims to regulate the recognition or recognition and understanding or perception of the same legally regarding the determination of the status of cooperating perpetrator witnesses or justice collaborators that apply from the examination stage at the investigation level to the examination stage at the court level even up to the implementation of its execution in order to create the principle of legal certainty for the Defendant who is designated as cooperating perpetrator witnesses or justice collaborators.

## **INTRODUCTION**

Idealistically, the process of law enforcement in eradicating criminal acts of corruption is of course not carried out by selective logging or discrimination because basically law enforcement is carried out without any exceptions for any party. The principle of equality before the law or equality before the law is a guideline that must be obeyed by all law enforcement officials and law enforcement agencies so that guarantees of law enforcement and legal certainty can be implemented without discrimination (Saputra, 2015).

Other problems that also often arise in the process of law enforcement in eradicating criminal acts of corruption are problems related to the determination of status as witnesses for collaborating actors or justice collaborators in the settlement of a corruption case (Ariyanti & Ariyani, 2020). Based on real experience during which the author provided legal assistance and assisted the parties involved as perpetrators and was subsequently determined as witness to the perpetrators who collaborated or justice collaborators in a corruption crime case. Sutanti (2013) stating normatively, what is meant by witnesses of actors who cooperate or justice collaborators are suspects, defendants, or convicts who work together with law enforcement to uncover a criminal act in the same case (Margono, 2017). In his position as a witness, the perpetrator who cooperates or justice collaborator, in a normative juridical way, obtains several privileges or privileges, namely as follows (Achmad & Taun, 2022):

1. Witnesses cooperating or justice collaborators cannot be legally prosecuted, either criminally or civilly for the testimony and/or report that will be, is being, or has been given, unless the testimony or report is not given in good faith (Ramadan, 2022).
2. In the event that there is a lawsuit against a witness who cooperates or a justice collaborator for the testimony and/or report that will be, is being, or has been given, the lawsuit must be postponed until the case is reported by the witness for the actor who cooperates or the justice collaborator or the witness for the actor who cooperates. or justice collaborator testifying that the court has decided and obtained permanent legal force (Tambajong, 2021).
3. Witnesses who work together or justice collaborators can be given special treatment in the examination process and awards or appreciation for the testimony that has been given (Timbunan, 2018).
4. Special handling of witness perpetrators who cooperate or justice collaborators as referred to can be in the form of the following matters:
  - a. Separation of places of detention or places of serving a crime between the Witnesses and suspects, defendants and/or convicts whose crimes have been disclosed;
  - b. Separation of filings between the dossiers of the perpetrator witnesses and the dossiers of suspects and defendants in the process of investigation and prosecution of the criminal acts they disclosed; and/or
  - c. Give testimony in front of the court without dealing directly with the defendant whose crime was revealed.
5. Appreciation for the testimony given by the perpetrator witness who cooperates or the justice collaborator as referred to can be in the form of the following:
  - a. Remission of criminal imposition; or
  - b. Conditional release, additional remissions, and other convict rights in accordance with statutory provisions for witness actors who work together or justice collaborators with convict status.

However, the privilege or pre-privilege as described in the provisions of Article 10 Paragraph (1) and Paragraph (2) as well as the provisions of Article 10 A Paragraph (1), Paragraph (2) and Paragraph (3) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning The Protection of Witnesses and Victims cannot be applied to some perpetrators of corruption crimes who have been defended and provided assistance by the author. In the reality experienced by parties who have been accompanied by their defense by the author, the granting of status as a cooperating perpetrator witness or justice collaborator does not provide legal certainty nor does it provide benefits or utility to these parties. Even in one of the corruption crime cases related to the alleged corruption crime committed by Tubagus Chaeri Wardana alias Wawan, there is a party named Dadang Prijatna who has been designated as a witness for cooperating perpetrators or justice collaborators by the Corruption Eradication Commission of the Republic of Indonesia is still charged as a suspect and defendant status in corruption criminal cases that are examined and prosecuted by the Banten High Prosecutor's Office and the Tigaraksa District Attorney's Office.

Another problem also arises in the case of which there is one party who has been designated as a cooperating perpetrator witness or justice collaborator based on the Decree of the Chairman of the Corruption Eradication Commission of the Republic of Indonesia but in the trial at the Corruption Crimes Court at the Semarang District Court, it turns out that the Panel of Judges has other legal considerations that do not agree to determine the Defendant as a cooperating perpetrator witness or justice collaborator. This has happened in the Corruption Court at the Semarang District Court which examined and tried defendant Cahyo Supriadi in a corruption case about giving something to a civil servant or state organizer (in this case to Tegal Mayor Siti Masitha Soeparno through a confidant of the Mayor of Tegal, namely Amir Mirza Hutagalung) because of or related to something contrary to obligations, carried out or not carried out in his position as stipulated in the provisions of Article 5 Paragraph (1) letter b of Law Number 31 of 1991 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1991 concerning the Eradication of Corruption Crimes

The existence of several problems stemming from the lack of understanding or the absence of unification of policies in determining the status of perpetrators as witnesses to collaborating actors or justice collaborators

along with the benefits arising from the determination of witnesses to actors working together or justice collaborators, of course, creates legal uncertainty and also does not provide benefit or utility for the party designated as a witness to the cooperating actor or justice collaborator (Semendawai, 2016).

It is fitting that the problem as described above is related to the determination of the perpetrator witnesses who cooperate or justice collaborators do not arise if the legal politics of enforcing corruption crimes between law enforcement officials or law enforcement agencies is carried out based on formal criminal law principles such as the principle of mutual respect. coordination as part of an integrated or integrated criminal justice system. The key word of an integrated or integrated criminal justice system is the existence of integration or integration in the form of policy construction and construction of policy implementation owned by each law enforcement apparatus or law enforcement agency (Pratama, Muhammad, & Tando, 2022). Such integration or integration is the main factor for eliminating or at least minimizing the egotism of policies and main tasks as well as the functions or duties of every law enforcement apparatus and law enforcement agency. Based on the principle of formal criminal law, the existence of egoism in policies and main tasks as well as the functions or duties of each law enforcement apparatus and law enforcement agencies is part of the principle of functional differentiation.

If it is correlated with the emergence of differences or inequalities in the construction of policies and the implementation of policies to determine a suspect or defendant as a witness for a cooperating actor or justice collaborator starting from the level of examination in investigations to examinations in court, this is one example of the domination of institutional egoism. Therefore, it is necessary to carry out a reconstruction related to the unification of policies governing the determination of witness actors who cooperate or justice collaborators, including the reconstruction of the unification of the implementation of policies regarding the determination of witness actors who cooperate or justice collaborators so as to provide legal certainty and equal benefits to all parties who are determined as witnesses to the perpetrators who work together or justice collaborators. Thus, the study aims to examine (1) what are the current regulations regarding the policy of establishing a Justice Collaborators in corruption cases? (2) what is the implementation of the policy of determining Justice Collaborators in corruption cases?

## METHODS

The research method used in this study is a type of normative legal research using secondary data obtained by conducting a document study. As for the secondary data that will be used in the form of laws and regulations, studies, papers, documents and other literature books related to the material regarding Policy Reconstruction Against the Determination of Justice Collaborators in Criminal Cases Corruption Viewed From The Principle Of Legal Certainty And The Aspect Of Benefits. The entire secondary data can be reclassified based on its type into primary legal materials, secondary legal materials and tertiary legal materials (Soekanto & Mamudji, 2001).

## RESULTS

### A. GL

Compilation of arrangements regarding witness perpetrators who cooperate or justice collaborators 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 argue that in 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 the existence of terms and definitions regarding witnesses of cooperating perpetrators or justice collaborators. On the other hand, in 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, it only regulates whistle blowers or whistle blowers which are part of the form of community participation in the legal politics of eradicating 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 of 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.

When looking at the substance of Government Regulation Number 71 of 2000 concerning Procedures for Implementing Community Participation and Awarding in the Prevention and Eradication of Corruption Crimes as implementing regulations of Law Number 31 of 1999 concerning Eradication of Corruption Crimes, there is a first regulation regarding public participation in assisting the disclosure of criminal acts of corruption by providing information to law enforcement agencies or commissions. In addition to providing information, the public can also provide suggestions and opinions related to criminal acts of corruption (Dewi et al., 2017).

Furthermore, after law enforcement agencies or commissions receive reports or information from the public, clarification will be carried out first through the case mechanism by law enforcement. Bang(2019)case title is an activity of conveying an explanation regarding the investigation and investigation process by the investigator to the participants of the case title and then proceed with group discussions with the aim of providing constructive and correctional responses or suggestions or opinions in order to provide recommendations to determine follow-up in the investigation process and investigation.

If after the verification stage with the case title mechanism it is assessed that the information or report regarding the existence of a criminal act of corruption submitted by the public is sufficient to carry out a follow-up examination process starting from the investigation stage, the investigation stage, the prosecution stage up to the examination stage through trial in court, then The government has an obligation to provide legal protection. The form of legal protection given to people who have played an active role in uncovering criminal acts of corruption is as follows:

1. Provision of legal protection for the legal status of the public who have played an active role in providing information or reporting on criminal acts of corruption. If from the results of the investigation or investigation there is sufficient evidence to corroborate the involvement of the complainant in the reported corruption case, the reporter is not given legal status, in this case he is not given the status of a suspect. In addition, this legal status can also be applied to the reporter if the reporter himself is subject to prosecution in other cases (Hikmawati, 2016).
2. Provision of a sense of security in the form of not providing information regarding the identity of people who become reporters or informants in corruption cases.
3. In addition to obtaining legal protection, the Government is also required to provide appreciation in the form of a charter or premium to the public who have provided information or reported on the act of corruption. The existence of the provision of legal protection and also the provision of appreciation in the form of a charter or premium is a right obtained from the community as a party that has played a role and actively participated in the disclosure of criminal acts of corruption.

## **B. KKK**

The design of the reconstruction of the policy for the determination of witness collaborators in cases of criminal acts of corruption by law enforcement institutions in Indonesia is as follows:

1. Submit a request to the legislature, namely the House of Representatives together with the Government of the Republic of Indonesia in this case through the Ministry of Law and Human Rights of the Republic of Indonesia to be able to add new norms to the Draft Criminal Procedure Code that has not been ratified regarding model arrangements Witness Agreement between law enforcement agencies and suspects or defendants who will later be designated as witnesses to cooperating actors or justice collaborators (Mulyadi, 2014). The Witness Agreement model will certainly strengthen the principle of mutual coordination in an integrated or integrated criminal justice system so that there are no longer differences in regulatory policies governing standardization in setting criteria and categories of witnesses for collaborating actors or justice collaborators including the granting of privileges or the privilege.

2. Carry out intense and continuous coordination between law enforcement agencies, especially in order to be able to form mutually agreed norms regarding criteria or requirements that can be used to determine suspects or defendants as witnesses for perpetrators who cooperate in corruption cases.
3. Carry out intense and continuous coordination between law enforcement agencies with the aim of being able to carry out unconditional acceptance of legal products issued by one of the legal institutions related to the determination of the legal status of suspects or defendants as witness witnesses who cooperate in corruption cases. This means that if a suspect or defendant has been determined as a witness to the perpetrator who cooperated in a corruption case by one of the law enforcement agencies through a Decree from the Leader or Head of the said law enforcement agency, other law enforcement agencies are obliged to accept a Decision Letter stipulating the suspect. or the accused as a witness to the perpetrators who collaborated by putting aside egoism and culture owned by the institution.
4. Carry out intense and continuous coordination between law enforcement agencies to provide treatment that benefits and relieves suspects or defendants who have been designated as witnesses to cooperating perpetrators. This means that if a suspect or defendant has been determined as a witness to a cooperating actor who is then suspected of being involved in other corruption cases that are still the same and become an integral part of the main corruption case and occur in a systematic and structured manner, then the The perpetrator witness who cooperates may be able to not apply his new legal status as a suspect and/or may not be prosecuted against him because he has been determined as a witness for the perpetrator who collaborated. By being designated as a cooperating witness, the suspect or defendant has also dedicated all of his abilities to commit to helping law enforcement agencies or officials to disclose comprehensively and clearly in corruption cases with all the consequences and risks.
5. Carry out intense and continuous coordination between law enforcement agencies including penitentiary institutions to be able to provide continuous monitoring and attention to convicts who were formerly suspects or defendants who have been designated as witnesses to cooperating actors or justice collaborators in corruption cases. This also includes providing conveniences for convicts who were previously suspects or defendants who have been designated as witnesses to cooperating actors or justice collaborators in corruption cases to arrange the requirements that must be met in order to apply for remission or parole. This is in accordance with the principle of expediency that is actually expected by the witnesses who cooperate.

## CONCLUSION

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. 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 the existence of terms and definitions regarding witnesses of cooperating perpetrators or justice collaborators. On the other hand, in 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, it only regulates whistle blowers or whistle blowers which are part of the form of community participation in the legal politics of eradicating corruption.

Government Regulation Number 71 of 2000 concerning Procedures for the Implementation of Community Participation and Awarding in the Prevention and Eradication of Corruption Crimes as an implementing regulation of Law Number 31 of 1999 concerning the 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.

Reconstruction of policies in the determination of perpetrator witnesses who cooperate or justice collaborators is something that must be carried out by law enforcement agencies. Reconstruction of this policy is in the form of reconstructing regulatory policies regarding witness actors who cooperate or justice collaborators and also reconstructing policies for implementing the determination of witness actors who cooperate or justice collaborators in cases of criminal acts of corruption in Indonesia. The concept of this

reconstruction is actually aimed at providing certainty and also benefits for witness actors who work together or justice collaborators in cases of criminal acts of corruption.

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