

Justice Collaboratory in Revealing the Crime of Narcotic Crime

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Abstract: *The Law research was conducted to find out the concepts and benefits of using justice collaborator mechanisms in uncovering narcotics crimes in Indonesia with applicable laws and how to optimize the role and provide protection of Justice Collaborators in the fight against narcotics crime in Indonesia. The research method uses normative juridical study that bases on the laws and regulations related to the research theme. The results of the study can be explained that the concept of Justice Collaborator, has been widely mentioned in various laws and regulations, such as in Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, Law Number 5 of 2009 concerning Ratification of the United Nations Conventions Against Transnational Organized Crime (United Nations Convention Against Organized Transnational Crime), Law Number 31 of 2014 concerning Witness and Victim Protection, Supreme Court Circular Letter (SEMA) Number 4 of 2011, Joint Regulations of Kemenkumham, Polri, Attorney General's Office, Attorney General, KPK and LPSK in 2011. Then, it can be explained that the mechanism of using justice collaborator has an important role and benefits in dismantling narcotics crime, this is because Justice Collaborator has access to the narcotics network even though the risk faced by Justice Collaborator is also high. Therefore, witnesses of justice collaborators who want to work together in uncovering and dismantling narcotics networks need to get legal protection, special handling and appreciation.*

Keywords: Justice Collaborator, Narcotics Crime

1. Background Problems

The current drug phenomenon is already in a state of emergency, and Indonesia has become the largest drug market in Asia. According to data from the National Narcotics Agency (BNN), throughout 2017 the number of suspected drug case suspects rose by more than 4,000 suspects when compared to the previous year. If in 2016 there were 1,238 suspects who were arrested, then by the end of 2017 BNN had managed to arrest 58,365 drug suspects.¹ Meanwhile, according to the United Nations Office on Drugs and Crime (UNODC), 315 million people in the world of productive age or aged 15 to 65 years become drug users. While in Indonesia drug abuse in 2015 alone reached 6.4 million people,² and according to BNN data 27.32% of drug users in Indonesia are students and students. This means that the need for narcotics has reached 6 tons per week, where the circulation of money in this business has reached Rp 250 trillion in a year.

Data from the Indonesian Child Protection Commission (KPAI) mentions that of the 87 million population of Indonesian children, 5.9 million of them have become drug addicts. Even more terrible, 1.6 million children of that number have become dealers of illicit goods. This data is quite astonishing how the influence of drugs has been so strong gripping our country. The country seems helpless to face and fight the superiority of drug dealers. For example, on Saturday (10/02/2019), the Indonesian Navy managed to capture the MV Sunrise Glory which was carrying more than one ton of methamphetamine in the waters of the Philips Strait, the Indonesian border with Singapore or around the waters of Batam, Riau Islands. Not long after, a

joint customs and police officer also caught a Taiwanese ship at the Batam Batam Port in Sekupang carrying 86 sacks one weighing 1.6 tons.³

These two examples of smuggling of methamphetamine from abroad indicate how Indonesia has truly become a market for international network drug trafficking. Not to mention, before, many drug factories were successfully raided by law enforcement agencies in the country. Indonesia is not only a drug market, even this country has been categorized as a State of producing illicit goods.

Based on the above explanation, it shows that crime and narcotics abuse have entered into emergency conditions and are very dangerous, especially for the next generation of the nation, and of course these conditions should not be faced and responded to only in a conventional manner. Therefore, there needs to be legal politics, decisive and drastic measures in dismantling the crime of smuggling, circulation or other related narcotic crime. However, this is not an easy job for the authorities to eradicate this drug crime, because as is well known the character of drug crimes has a closed, systematic and very neatly organized network system. Therefore, there needs to be other efforts, one of which is the need for legal politics using justice collaborators in combating drug crimes.

Head of the Witness and Victim Protection Agency (LPSK) Abdul Haris Semendawai recently gave input that the use of justice collaborators is expected to be an effective way of combating drug trafficking and abuse. This is because Justice collaborators have access to the narcotics network.⁴

¹Badan Narkotika Nasional, "Kasus Narkotika Sepanjang Tahun 2017," *Majalah Bulanan BNN*, 2018

² Ibid.

³ "Darurat Narkotika", harian *Kompas*, edisi 11 Februari 2018.

⁴ "Justice collaborator perlu perlindungan istimewa", *Tempo*, edisi 12 Desember 2017.

As it is known that in the criminal procedure law there is a process of investigation, investigation and prosecution of the suspect. However, if it is related to the suspect, then there is an effort that must be done in terms of eradicating specific criminal acts and the effort is specifically against the suspect who wants to cooperate with law enforcement in uncovering serial cases, then the effort that must be carried out by the suspect is to become a justice collaborator.

There is another matter regarding the consideration of law enforcers if there is a suspect who wants to play a role as a justice collaborator, for example the consideration of the public prosecutor in his claim states that the person concerned has provided information and evidence which is very significant so that the investigation and prosecutor can uncover the intended criminal act in effective, revealing other perpetrators who have a greater role. For this assistance, witnesses who are willing to cooperate, as meant above, the judge determines that the criminal will be imposed may consider criminal sentences, for example a special conditional trial or impose a lighter prison sentence among other defendants who are proven guilty in the case referred and granting special treatment in the form of criminal relief even though the judge is still obliged to consider the community's justice.

Definitively the definition of justice collaborator itself, can first be seen in a circular of the Supreme Court in 2011 about the treatment of justice collaborator which is interpreted as a perpetrator of a particular crime, but is not the main actor who recognizes his actions and is willing to be a witness in the judicial process.⁵ But in a joint decree between the witness and victim protection institutions (LPSK) the Attorney General's Office, the Indonesian Police, the Corruption Eradication Commission (KPK) and the Supreme Court (MA), justice collaborator is a witness who is also a perpetrator, but wants to work with law enforcement in order to dismantle a case and even assets resulting from crime such as corruption if the asset is in him.

In Law Number 13 of 2006 concerning Protection of Witnesses and Victims (hereinafter referred to as Law No. 13 of 2006) the position of the reporter and witness has a strategic role in the disclosure of a criminal act. Article 10 paragraph (1) of Law No. 13 of 2006. This Article states, "Witnesses, Victims and Reporters cannot be legally prosecuted either criminal or civil on reports, testimonies that will be, are, or has been given." This article basically provides protection for those who have dared to give reports or testimonies because in practice these people are often charged back with accusations of defamation.

Article 10 paragraph (1) of Law No. 13 of 2006 seeks to protect whistleblowers and witnesses from being prosecuted for their reports or testimonies, but such protection will not be granted if it turns out that the person concerned was also involved in the case he reported. Article 10 paragraph (1) of Law No. 13 of 2006 is actually trying to attract the people

⁵ Edaran Mahkamah Agung (SEMA) No. 04 Tahun 2011 tentang Perlakuan Bagi Pelapor Tindak Pidana (Whistleblower) dan Saksi Pelaku yang Bekerja Sama (Justice Collaborator) di dalam Perkara Tindak Pidana Tertentu.

involved, and even become a suspect in a similar criminal case to want to provide information as a witness or reporter. Meanwhile Article 10 paragraph (2) of Law no. 13 of 2006 states that:

"A Witness who is also a suspect in the same case cannot be acquitted of criminal charges if he turns out to be proven legally and convincingly guilty, but his testimony can be taken into consideration by the judge in alleviating the crime to be handed down."

Based on that paragraph, if the reporter or witness turns out to have also been the perpetrator of the crime, then he will only get a "reward" in the form of consideration of his testimony by the judge for criminal relief from in passing a criminal verdict on him. The person concerned will not be released from criminal charges.

As is known, in the disclosure of a criminal case, starting from the level of investigation, investigation, to examination at trial, the presence and role of witnesses is very important, often even a determining factor in the disclosure of the case. Witness, as one of the parties involved in criminal procedural law⁶ has a very important role without which the criminal justice system will stop functioning.⁷ There are almost no criminal cases in which the evidence does not use witness testimonies because witness testimonies are considered as the most important evidence in proving criminal cases.⁸

In Indonesia, Narcotics crime is included in the category of extraordinary organized crime. Based on the impact and the difficulty of disclosing Narcotics crime cases, the State must attend and must continue to work to increase efforts beyond conventional efforts in uncovering Narcotics criminal cases for law enforcement and government. The awarding of inmates as Actors Witness (Justice collaborator) is a concept that should be applied with all the consequences. Considering maintaining the next generation which is the main target of Narcotics crime is the most urgent step, without ruling out the eradication of corruption, money laundering, terrorism or other crimes.

2. Problem Formulation

Based on the above background, in this legal research we want to examine:

- What are the concepts and benefits of using a justice collaborator mechanism in uncovering narcotics crimes in Indonesia with applicable laws?
- How to optimize the role and provide justice collaborator protection in efforts to combat narcotic crime in Indonesia?

⁶ Suryono Sutarto, *Hukum Acara Pidana Jilid I*, (Semarang: Badan Penerbit UNDIP, 1991), hlm.12

⁷ Nicholas Fyfe dan James Sheptycki, *Facilitating Witness Cooperation in Organised Crime Cases: An International Review*, (London: Crown Research Development and Statistics Directorate Home Office, 2005), hlm. 33

⁸ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, ed. Ke-2, (Jakarta: Sinar Grafika, 2002), hlm. 286

3. Research Objectives

- a) To find out the concepts and benefits of using a justice collaborator mechanism in uncovering narcotics crimes in Indonesia with applicable laws.
- b) To find out how to optimize the role and provide justice collaborator protection in efforts to combat narcotic crime in Indonesia.

4. Method

4.1 Approach Method

The research method used in this study is the judicial normative approach. In the juridical normative approach, often the law is conceptualized as what is written in the legislation (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is deemed appropriate.⁹

As in this writing, it is associated with the use of justice collaborators in uncovering narcotics crimes, where the rules or laws governing the extent to which the use of justice collaborators in revealing narcotic crime. Therefore, the source of the data is only secondary data, which consists of primary legal material; secondary legal material; or tertiary data.¹⁰

Method of collecting data

Secondary data sources consist of primary legal materials, secondary legal materials and tertiary legal materials.¹¹

- 1) Primary legal material is authoritative meaning it has authority. Primary legal material consists of legislative regulations, official records or minutes in the making of laws and judges' decisions, including:
 - a) Law No. 13 of 2006 concerning Protection of Witnesses and Victims
 - b) SEMA No.4 of 2011 Concerning Treatment for Whistleblowers and Justice collaborators.
- 2) Secondary legal materials are used to help understand various legal concepts in primary legal materials, analysis of primary legal materials is assisted by secondary legal materials obtained from various journal sources, books, papers and scientific works on the protection of whistleblowers and justice collaborators.
- 3) Tertiary legal material is needed to explain things in terms of explaining the meanings of words from primary legal materials and secondary legal materials, especially legal dictionaries.

4.2 Analysis Method

Analysis of the data above uses descriptive qualitative and argumentative analysis methods. Description in the form of

⁹Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Rajawali Press, 2006), hlm. 118.

¹⁰ibid

¹¹ Peter Mahmud Marzuki, *Op.Cit.*, hal.97

a description of legal materials as they are then continued with an evaluation in the form of an evaluation of the legal materials. These legal materials are interpreted by legal interpretation methods, both grammatical interpretations, systematic interpretations, authentic interpretations, which are then analyzed based on relevant legal theories and doctrines related to the problem.¹²

5. Research Results and Discussion

5.1 Concepts and Benefits of Using the Justice Collaborator Mechanism in Exposing Narcotics Crimes in Indonesia with Per Applicable Laws

The concepts and terms of Justice Collaborator or collaborator with justice are new things in Indonesia. The emergence of the term originated from the Susno Duaji Case. At that time, the existing term was Whistleblower, Whistle Blower or Kent Beat. However, the term in Susni Duaji's case is considered not very appropriate because Susno Duaji's status is not only someone who conveys an alleged crime to a law enforcement officer but is someone who is also involved in a crime. In the concept that applies internationally, people with this kind of status are called Justice Collaborators. But at that time, Indonesia had not specifically regulated the Justice Collaborator in the applicable regulations. This is one of the considerations to immediately regulate Justice Collaborator.

In Indonesia, witnesses who are also perpetrators are known by several terms, including:

- 1) Suspect Witness (Law Number 13 Year 2006);
- 2) Witness Acting in Collaboration / Justice Collaborator (Circular of the Supreme Court (SEMA) Number 4 of 2011);
- 3) Witness Acting in Collaboration (Joint Regulations of Ministry of Law and Human Rights, Polri, Attorney General's Office, KPK and LPSK 2011);
- 4) Acting Witness (Law Number 31 Year 2014).

Based on various regulations that exist in Indonesia, the development of regulations governing the Justice Collaborator can be seen as follows:

- 1) Arrangement of Justice Collaborator in Law Number 8 of 1981 concerning Criminal Procedure
The Criminal Procedure Code (KUHAP), known as Law Number 8 of 1981, is a guideline in the implementation and practice of material criminal law that contains procedures for the investigation, investigation, prosecution, examination, appeal, appeal to the high court, and cassation and reconsideration to the Supreme Court (MA). Based on Article 184 of the Criminal Procedure Code, it is stated that there are 5 (five) valid evidences for the criminal justice verification process, namely:
 - a) Witness statement;
 - b) Expert statement;
 - c) Letter;
 - d) Hints; and
 - e) Defendant's statement.

¹² Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2008), hal. 27

Witness statements are at the top of the other pieces of evidence. The term witness as regulated in Article 1 number 26 of the Criminal Procedure Code reads:

"A witness is a person who can provide information for the purposes of investigation, prosecution and trial of a criminal case which he heard himself, saw for himself and experienced himself"

Based on the understanding of witnesses in Article 1 number 26 of the Criminal Procedure Code, conclusions can be drawn which are the conditions of witnesses, namely:

- a) Is a person who heard the occurrence of a criminal act himself;
- b) Is a person who saw or witnessed with his own eyes a crime;
- c) Is a person who experiences himself and / or a person who is directly a victim of an event that is a criminal offense.

In the evidentiary theory in criminal procedural law, the testimony of witnesses in court is an important and primary evidence. Although there are still other evidences other than witness statements, but at least the evidence with other evidence, witness testimony is an obligation to always be needed in the verification process. So that in this case there is no criminal case which escapes the evidence of witness testimony.¹³

Criminal Procedure Code as a criminal procedure law does not provide direct arrangements for the perpetrators, suspects, or defendants in terms of giving testimony on a crime he committed himself. But law enforcers in practice recognize this title as a crown witness.

In the Criminal Procedure Code, does not explain about Justice Collaborator. The word Justice Collaborator comes from English which was adopted from America. Like the Justice Collaborator, the crown witness was also not explained in the Criminal Procedure Code. But since prior to the enactment of the Criminal Procedure Code, the term crown witness has been known as evidence used in the event of a deeneming, where one defendant is a witness against another defendant because the other evidence is not available or is not sufficient because in this case it is intended to simplify the verification process.

The concept of crown witnesses entered into Indonesian legal practice through the Decision of the Supreme Court of the Republic of Indonesia Number: 1986 K / Pid / 1989 dated March 21, 1990. In this case the Supreme Court did not prohibit the Prosecutor / Prosecutor from submitting the crown witness on the condition that the witness in his position as a defendant be separated from the witness's case and not included in one case file.

Regarding the definition of the crown witness in the

¹³M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP, Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, Edisi II, (Jakarta: Sinar Grafika, 2000), hlm. 286.

Supreme Court Decision Number. 2437 K / Pid.Sus / 2011 which states that:

"Although there is no authentic definition in the Criminal Procedure Code regarding the crown witness (kroongetuide), based on an empirical perspective, the crown witness is defined as a witness who came from or was taken from one of the suspects or other defendants who jointly committed a criminal act, and in which case to the witness is given a crown. The crown given to witnesses with the status of defendant is in the form of a very mild dispensation if the case is handed over to a court of law or condoned for wrongdoing. According to Prof. Dr. Loebby Loqman, S.H., MH, explained that what is meant by the witness of the crown is the testimony of fellow defendants which usually occurs in the incidents of inclusion".

Justice Collaborator can be used as a tool of evidence in the disclosure of crime. So the regulation of the Justice Collaborator in the Criminal Procedure Code is not a problem in itself, whereas the provisions in the Criminal Procedure Code only regulate the rights of an offender in the criminal justice process.

Arrangements regarding the Justice Collaborator can actually be done by revising the Criminal Procedure Code. Whereas in the draft revision of the Criminal Procedure Code only includes arrangements regarding crown witnesses. In the Criminal Procedure Bill, the crown witness turns out to be regulated in the seventh part of Article 200 which reads:

- 1) One of the suspects or defendants whose role is the lightest can be made a witness in the same case and can be acquitted of criminal prosecution, if the witness helps reveal the involvement of other suspects who should be convicted in the crime.
- 2) If there is no suspect or defendant whose role is mild in the criminal act referred to in paragraph (1), the suspect or defendant who pleases guilty based on Article 199 and helps to substantively disclose the criminal act and the role of other suspects can be reduced by the court judge's discretion country.
- 3) The public prosecutor determines the suspect or defendant as the crown witness.

The term used in the Criminal Procedure Code does not recognize the term Justice Collaborator, even though this term is intended for someone who helps law enforcement officials to help uncover a crime. But in the draft revision of the Criminal Procedure Code only regulates the term crown witness, which is the legal term used in the Dutch Wetboek van Strafvordering (KUHAP).

The Crown Witness is the main witness of the prosecutor, while the Justice Collaborator is a person who cooperates with law enforcement. The similarity between the crown witness and the Justice Collaborator is that the two terms are intended that the perpetrators in that term are the perpetrators in a crime. While the difference between the two terms is that in the crown witness, the initiative to provide information comes from law enforcement officials, which in this case is due to law enforcement officials having difficulty in revealing a crime due to lack of other evidence,

so that law enforcement officers take one of the perpetrators who have a minimal role in the crime to be witnesses against other perpetrators by separating case files between the crown witness and other perpetrators.

At the Justice Collaborator, the initiative in providing information about a criminal offense stems from the initiative of the perpetrator himself who consciously recognizes the act he committed and assists law enforcement officials by providing information relating to the crime committed and the involvement of other main actors. Another difference is also that the crown witness plays a role in criminal cases regulated in the Criminal Code, while the Justice Collaborator plays a role in certain criminal cases, namely corruption, terrorism, narcotics, money laundering, and criminal trafficking in persons, as well as other organized criminal acts, has posed serious problems and threats to the stability and security of the community.

5.2 Arrangement of Justice Collaborator in Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003)

The preparation of the United Nations Convention Against Corruption began with an awareness that the need to formulate international anti-corruption international legal instruments as discussed by the General Assembly of the United Nations in its 55th session through Resolution Number 55/61 on December 6, 2000. International legal instruments This is necessary to bridge the different legal systems and at the same time advance efforts to effectively eradicate corruption. In the United Nations Convention Against Corruption Article 37 discusses cooperation with law enforcement officials. Article 37 paragraph (2) explains the role of the State to consider giving rewards to actors who provide cooperation, article 37 paragraph (2) reads:

"Each Member State shall consider giving the possibility, in certain cases, of reducing the sentence of the defendant who provides substantial cooperation in the investigation or prosecution of a crime determined according to this convention"

In paragraph (3), it is explained again about the role of the State to give consideration to the immunity of prosecution against cooperating actors, paragraph (3) reads:

"Each Member State shall consider providing the possibility, in accordance with the basic principles of its national law, to provide immunity from prosecution for persons who provide substantial cooperation in the investigation of this Convention"

In that Article, what is meant by "those who provide substantive cooperation" is the same as the terms of the Justice Collaborator which means witnesses of the collaborating actors. This collaboration is a collaboration carried out together with investigators to uncover something that is the essence of organized crime stipulated in this convention.

In Indonesia, the development of the idea of the emergence of Justice Collaborator actually starts from the provisions of

the two articles, namely Article 37 paragraph (2) and 37 paragraph (3) of the United Nations Convention Against Corruption (UNCAC) Year 2003.

Indonesia, which is a member country, participated in ratifying this convention. several reasons that have been included in the explanation of this Act are in the importance of the convention for Indonesia, namely:

- a) Considered as a national commitment to enhance the image of the Indonesian people in the international political arena;
- b) To enhance international cooperation, especially in tracking, freezing, confiscating, and returning assets resulting from criminal acts of corruption placed abroad;
- c) Increase international cooperation in realizing good governance;
- d) Enhancing international cooperation in implementing extradition treaties, mutual legal assistance, inmate submission, transfer of criminal proceedings, and law enforcement cooperation;
- e) Encouraging technical cooperation and information exchange in preventing and eradicating criminal acts of corruption under the payment of economic development cooperation and technical assistance in the scope of bilateral, regional and multilateral; and
- f) Harmonization of national legislation in the prevention and eradication of criminal acts of corruption in accordance with this convention.
- g) In addition to the Nations Convention Against Corruption (UNCAC), Indonesia has also ratified the United Nations Convention Against Transnational Organized Crime through Law Number 5 of 2009 concerning the United Nations Convention Against Transnational Organized Crime. These two United Nations conventions which have been ratified by Indonesia, are the legal basis that forms the background to the idea of a Justice Collaborator in criminal justice.

5.3 Arrangement of Justice Collaborator in Law Number 5 Year 2009 concerning Ratification of the United Nations Conventions Against Transnational Organized Crime (United Nations Convention Against Organized Transnational Crime).

In the United Nations Conventions Against Transnational Organized Crime (UNCATOC) which was later ratified into Law Number 5 of 2009 also provided regulatory ideas relating to Justice Collaborator in criminal justice. This convention provides considerations regarding the awarding of Justice Collaborators, as stated in Article 26, namely the "Steps to enhance cooperation with law enforcement authorities" namely in paragraphs (2) and (3) which read:

- 1) Each member State shall consider giving the possibility, in appropriate cases, to reduce the sentence of the defendant who provides substantial cooperation in the investigation or prosecution of criminal offenses covered by this Convention;
- 2) Each member State shall consider giving the possibility, in accordance with the basic principles of its national law, to grant immunity from prosecution to someone who provides substantial cooperation in the investigation or prosecution of criminal offenses covered by this Convention.

In this regulation, the State is obliged to provide a reduction in punishment and immunity for prosecution against someone who provides cooperation in the investigation of criminal offenses regulated in the United Nations Convention Against Transnational Crime. The cooperation that is carried out is cooperation to mengungkap transnational organized crime, where this crime is one form of crime that threatens social economic life, politics, security and world peace.

5.4 Arrangement of Justice Collaborator in Law Number 13 Year 2006 concerning Protection of Witnesses and Victims.

Regulations regarding Justice Collaborator in Indonesia can be said to have not existed prior to the birth of Law Number 13 of 2006. In these regulations, arrangements regarding Justice Collaborator or known as witnesses of collaborating actors are minimal. In this Act also has not provided clear definitions or guidelines on the requirements to be determined as a Justice Collaborator.

In this regulation, the rights of witnesses and victims are regulated, namely Article 5 paragraph (1), these rights are given to witnesses and / or victims in accordance with the LPSK decision. Rights to witnesses and victims in Article 5 reads:

- 1) A witness and victim are entitled to:
 - a) Obtain protection for personal, family, and property security, and be free from threats relating to the testimony that will be, is, or has been given;
 - b) Participate in the process of selecting and determining forms of protection and security support;
 - c) Give information without pressure;
 - d) Got a translator;
 - e) Free of tricky questions;
 - f) Obtain information about the development of the case;
 - g) Obtain information regarding court decisions;
 - h) Knowing that the convict was acquitted;
 - i) Get a new identity;
 - j) Get a new residence;
 - k) Obtain reimbursement of transportation costs as needed;
 - l) Get legal advice; and / or
 - m) Obtain temporary living costs until the protection deadline expires.

Article 5 paragraph (2) states that these rights can be granted against criminal offenses in certain cases, namely corruption, narcotics / psychotropic acts, terrorism and other criminal acts which result in the position of witnesses and victims being exposed to situations that endanger their lives.

The role of a Justice Collaborator or known witnesses of the collaborators in this Act is only known in Article 10 paragraph (2), which reads:

A witness who is also a suspect in the same case cannot be acquitted of criminal charges if he turns out to be proven legally and convincingly guilty, but his testimony can be taken into consideration by the judge in alleviating the crime to be imposed.

The formulation in Article 10 paragraph (2) of Law Number

13 Year 2006 has become the basis for the witnesses who cooperate in this article called "witnesses who are also suspects". A suspect may also be a witness, that is, a witness in the same case, where the witness as regulated in this Law is the person who provides information for the purposes of investigation, investigation, prosecution and examination at a court hearing about a case which he heard himself, see alone and / or naturally. In this article it is sufficient to explain the role of a collaborator (Justice Collaborator) and also to explain recommendations for the testimony given. This reward is in the form of a criminal offense to be imposed. Then related to the rights of Justice Collaborator the same as the rights of witnesses and victims.

In Law Number 13 Year 2006 it regulates the rights of witnesses and / or victims, namely Article 5 paragraph (1) where the rights granted to witnesses and / or victims are in accordance with the LPSK decision. And further explanation is explained in paragraph (2) regarding what is meant by certain cases, including corruption, narcotics / psychotropic acts, terrorism, and other criminal acts which result in the position of witnesses and victims being faced with situations that would endanger their lives.¹⁴

Law Number 13 Year 2006 in its implementation there are weaknesses because of the many different interpretations by the community and law enforcement officials. In this Act only briefly explained without being followed by a wider scope of witnesses of the collaborating perpetrators (Justice Collaborator).

5.5 Arrangement of Justice Collaborator in Supreme Court Circular Letter (SEMA) Number 4 of 2011 concerning Treatment for Whistleblowers and Witnesses in Collaboration (Justice Collaborator)

The birth of the Supreme Court Circular (SEMA) Number 4 of 2011 was due to the large number of legal events handled by law enforcement officials, but there were no regulations that could clearly be used as a legal basis and then set specific limits regarding Justice Collaborators.

The existence of a legal vacuum for the judges in handling cases involving Justice Collaborators due to the absence of regulations regarding Justice Collaborators in the Criminal Code, then issued a Supreme Court Circular Letter (SEMA) which was then used as a guide for legal institutions under the Judicial Institution in terms of this is the Supreme Court.

This Supreme Court Circular (SEMA) is a further regulation of Article 10 of Law Number 13 Year 2006 concerning Protection of Witnesses and Victims. This is because the provisions in Article 10 still need further guidance in their application. The understanding of the Actors Witness (Justice Collaborator) based on the Supreme Court Circular Letter (SEMA) Number 4 of 2011 concerning Treatment for Whistleblowers and Justice Collaborators, is as a perpetrator of a particular crime, but is not the main offender who later recognizes his actions and is willing to be a witness in the

¹⁴ Dikdik M. Arief Mansur dan Elisatris Gultom, 2007, *Urgensi Perlindungan Korban Kejahatan antara Norma dan Realita*, Jakarta: Rajawali Press, hal. 154

judicial process.

In this Supreme Court Circular Letter (SEMA), in point 9 the guidelines for determining someone as a Collaborating Witness are described as follows:

- a) The person concerned is one of the perpetrators of certain criminal acts as referred to in this SEMA, acknowledging the crime committed, not the main perpetrator in the crime and providing information as a witness in the court proceedings;
- b) The Public Prosecutor in his claim stated that the person concerned has provided information and evidence that is very significant so that the investigator and / or public prosecutor can effectively disclose the acts of speech, disclose other actors who have a greater role and / or return assets → assets / results of a criminal offense;
- c) For this assistance, the Cooperative Witness as referred to above, the judge in determining the crime to be imposed may consider matters of criminal offense as follows:
 - Menjatuhkan pidana percobaan bersyarat khusus; dan/atau
 - Menjatuhkan pidana berupa pidana penjara yang paling ringan diantara terdakwa lainnya yang terbukti bersalah dalam perkara yang dimaksud.
 In granting special treatment in the form of criminal relief the judge is still obliged to consider the community's sense of justice.
- d) The Chair of the Court in distributing cases considers the following matters:
 - Give related cases revealed by the Acting Witness in Collaboration to the same assembly as far as possible; and
 - Prioritize other cases revealed by Witnesses in Cooperation.

To get status as a Justice Collaborator is not easy for the perpetrators of crime. So based on the number 9 Circular of the Supreme Court (SEMA), an outline can be made that the conditions that must be met for perpetrators of crime in order to become Justice Collaborators are:¹⁵

- 1) The criminal acts revealed are serious and / or organized crimes, such as corruption, gross human rights violations, drugs, terrorism, money laundering, trafficking, and forestry. So it does not apply to minor crimes.
- 2) The information given must be significant, relevant and reliable. Such information can really be used as a guide by law enforcement officials in disclosing a criminal act so as to facilitate the performance of law enforcement officers.
- 3) People with the status of Justice Collaborators are not the main perpetrators in the case because their presence as Justice Collaborators is to reveal who the main perpetrators in the case are. He only played a little role in the case but knew a lot about the criminal case that occurred.
- 4) The perpetrator acknowledges his actions before the law and is willing to return the assets obtained by the crime

¹⁵ Sigit Artantojati, 2010, *Perlindungan Terhadap Saksi Pelaku yang Bekerjasama (Justice Collaborators) oleh Lembaga Perlindungan Saksi dan Korban (LPSK)*, Tesis, Program Pascasarjana, Jakarta: Universitas Indonesia, hal. 90

in writing.

- 5) The public prosecutor in his claim states that the person concerned has provided information and evidence that is very significant so that the investigator and / or public prosecutor can effectively disclose the intended criminal act, disclose other actors who have a greater role and / or return the assets / proceeds of the crime.

The judge in giving this special treatment is obliged to consider the sense of justice of the community for the forms of criminal relief that will be given later. Justice Collaborators who are also prisoners are entitled to obtain additional remissions based on Article 1 through Article 6 of the Republic of Indonesia's Presidential Decree Number 174 of 1999 concerning Remission.

5.6 Arrangement of Justice Collaborator in a 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 Indonesian National Police, Corruption Eradication Commission of the Republic of Indonesia, Chairperson of the Republic of Indonesia Witness and Victim Protection Agency, Number: M.HH-11.HM.03.02.th.2011, Number: PER-045 / A / JA / 12/2011, Number: 1 of 2011, Number; KEPB-02 / 01-55 / 12/2011, Number: 4 of 2011 concerning Protection for Reporting Parties, Reporting Witnesses and Collaborating Witnesses.

The urgency of the regulation of witnesses in collaboration who increasingly becomes a necessity as instructed in the Presidential Instruction of the Republic of Indonesia Number 17 of 2011 concerning the Corruption Prevention and Eradication Action in 2012, then gave birth to this Joint Regulation.

The purpose of the establishment of this Joint Regulation is to equalize the views and perceptions as well as facilitate the implementation of the duties of law enforcement officials in uncovering a particular crime in this case constituting a serious or organized crime. This is because the existing provisions have not been fully able to provide adequate guarantees and protections for reporters, reporting witnesses and also witnesses of collaborating actors.

In this regulation the Justice Collaborator is called as a witness to the collaborating perpetrators. The definition of a collaborating witness is contained in Article 1 paragraph (3) which reads:

"Co-Operative Witnesses are witnesses who are also perpetrators of a crime who are willing to assist law enforcement officials to uncover a criminal act or the occurrence of a criminal act to return assets or proceeds of a crime to the state by providing information to law enforcement officials. and give testimony in the judicial process".

Even in this regulation, regarding the form of protection for the Justice Collaborator or referred to in this Act as a Collaborating Witness, the arrangement regarding the form of protection for the reporter and the reporting witness is

distinguished from the witness who collaborated. The form of protection for whistleblowers and whistleblower witnesses is listed in Article 5 while the forms of protection for Collaborating Witnesses are listed in Article 6, which reads:

- 1) Co-operating witnesses are entitled to:
 - a. Physical and psychological protection;
 - b. Legal protection;
 - c. Special handling; and
 - d. Appreciation.
- 2) Physical, psychological and / or legal protection as referred to in paragraphs (1) letters a and b are provided in accordance with the provisions of the applicable legislation.
- 3) Special handling as intended in paragraph (1) letter c can be in the form of:
 - a) Separation of places of detention, confinement or imprisonment from suspects, defendants and / or other prisoners from crimes revealed in the event that the Witness in Cooperating Acts is detained or undergoing a criminal offense;
 - b) Filing the case as far as possible is done separately from the suspect and / or other defendants in the criminal case reported or disclosed;
 - c) Postponement of his prosecution;
 - d) Delays in legal process (investigation and prosecution) that may arise because of the information, reports and / or testimonies that they provide; and / or
 - e) Give testimony before the court without showing his face or without showing his identity.
- 4) The award referred to in paragraph (1) letter d is in the form of:
 - a) Relief in prosecution demands, including demanding probation; and / or
 - b) Granting additional remissions and other prisoners' rights in accordance with the applicable laws and regulations if the Witness Acting in Cooperation is an inmate.

Regarding the mechanism for obtaining protection regulated in Articles 8, 9 and 10. Whereas the mechanism for canceling the protection of the Cooperating Witnesses is regulated in Article 11. The mechanism for obtaining protection in Article 8 reads:

- 1) Physical and psychological protection for Witnesses in Collaboration as referred to in Article 6 paragraph (1) letter a shall be submitted by law enforcement officials according to the stage of handling (investigator, public prosecutor or judge) to LPSK.
- 2) Physical and psychological protection for Witnesses in Collaboration as referred to in paragraph (1) is decided by LPSK based on recommendations from law enforcement officials according to the stage of handling (investigator, public prosecutor or judge).
- 3) In the event that the recommendation of law enforcement officials to provide protection as referred to in paragraph (2) is accepted by LPSK, the LPSK must provide protection whose implementation is coordinated with law enforcement officials and related parties.

The mechanism for obtaining protection in Article 9 reads:

Protection in the form of special handling as referred to in Article 6 paragraph (3) for Witnesses in Collaboration shall be given after the approval of law enforcement officers in accordance with the stage of handling (investigator, public prosecutor or judge).

The mechanism for obtaining protection in Article 10 reads:

- a) Protection in the form of an award for the cooperating Witness as referred to in Article 6 paragraph (4) letter a in the form of relief from prosecution, including demanding probation, is carried out with the following conditions:

Requests are submitted by the perpetrators themselves to the Attorney General or the Chairperson of the KPK;
- b) LPSK can submit recommendations to Acting Witnesses who collaborate and then be considered by the Attorney General or KPK Head;
- c) The request contains the identity of the Collaborating Witness, the reasons and the expected form of appreciation;
- d) The Attorney General or the Chairperson of the Corruption Eradication Commission decides to give or refuse to give awards that are carried out in accordance with applicable regulations.

(2) In the event that the Attorney General or KPK Chairperson approves the award request as referred to in paragraph (1), the Public Prosecutor must state in his claim regarding the role carried out by the Acting Witness who Cooperates in assisting the law enforcement process so that it can become a judge's consideration in passing a decision.

(3) In the case of awards in the form of remission and / or parole as referred to in Article 6 paragraph (4) letter b, the application shall be submitted by the Cooperating Witness, Attorney General, KPK Leaders and / or LPSK to the Minister of Law and Human Rights to then be processed in accordance with applicable laws and regulations.

The regulation concerning the mechanism of canceling the protection of the Collaborating Witnesses is regulated in Article 11, which reads:

- 1) Protection for Reporting Parties, Reporting Witnesses or Collaborating Witness Actors shall be canceled if based on the assessment of the law enforcement apparatus in accordance with the stage of handling, the person concerned has intentionally provided an incorrect statement or report.
- 2) Regarding the Reporting Party, Reporting Witness or Collaborating Witness who provides incorrect information as referred to in paragraph (1) is processed in accordance with applicable legal provisions.
- 3) Cancellation of protection as referred to in paragraph (1) shall be submitted by law enforcement officials in accordance with the stage of its handling to the official who issues the decision to grant protection and the official authorized to issue the said cancellation decision.
- 4) If the trial turns out to be a criminal offense disclosed by the Reporting Party, the Reporting Witness or the Acting Witness in Co-operation has not been proven (the defendant is acquitted) then this does not cancel the

protection or award that has been or will be given to him.

The Role and Legal Protection of Justice Collaborators for Narcotics Crimes

The Witness and Victim Protection Agency (LPSK) acknowledges that one way to expose narcotics is by utilizing the Justice Collaborator mechanism. This is because the Justice Collaborator has access to the narcotics network.¹⁶ Even so the risks faced by Justice Collaborator are also high. Then the protection and special treatment to them is important. In addition to physical protection, special treatment will also make members of the narcotics network want to become Justice Collaborator. With special treatment such as the separation of the file to the relief of the sentence certainly makes the choice to help dismantle the case to be a favorable choice for a Justice Collaborator rather than closing the information they have.

As is well known, one of the most serious crimes that is worrying today is narcotics crime. The large number of deaths that occur due to drug abuse makes law enforcement in Indonesia become more active in combating narcotics crime. Many narcotics abuse by teenagers, adults and parents.

Many of the narcotics abuse cases mentioned above need the role of the Justice Collaborator to greatly assist in the disclosure of narcotics crime distribution networks. Justice Collaborator itself has no definite rules governing people who are included in the Justice Collaborator category, it can only be done by convicts who are already in detention, but the implementation of Justice Collaborator itself is carried out by police investigators on the condition that according to the Court Circular Agung Number 4 of 2011 as follows:

- 1) Special criminal offenders
- 2) Acknowledge the crime committed
- 3) Not the main actor
- 4) Willing to be a witness in the trial process
- 5) The public prosecutor in his claim stated that the person involved provided significant information and evidence

There have been many attempts by law enforcement agencies and institutions in eradicating narcotics crimes, and many cases of narcotics smuggling and trafficking crimes are difficult to unravel in the narcotics crime chain. On the other hand alternative uses of Justice Collaborator are also not widely applied.

A person who becomes a Justice Collaborator in disclosing a narcotics network has the right and must be protected because of the availability of a suspect to reveal the other actors above or reveal the main perpetrators. Because of the dangers to dismantle these narcotics mafias, law enforcement officials protect a Justice Collaborator based on SEMA No. 04 of 2011 point 6, namely the protection of whistleblowers and witnesses of the collaborating actors (Justice Collaborator) has been regulated in article 10 Law No. 13 of 2006 concerning witness and victim protection. In

SEMA No. 04 of 2011 point 6 namely protection of whistleblowers and witnesses of cooperating actors (Justice Collaborators) are protected, as follows:

- 1) Victim's witnesses and reporters cannot be prosecuted both criminal and civil on reports, testimonies that will, are or have been given
- 2) A witness who is also a suspect in the same case cannot be acquitted of criminal charges if he turns out to be proven legally and convincingly guilty, but his testimony can be taken into consideration by the judge in alleviating the crime.

In point 9 letter c, with the assistance of the witness of the perpetrator, the judge in determining the crime to be imposed may pay attention to matters of criminal imprisonment but still consider the sense of justice of the community, as follows:

- 1) Dropping a special conditional trial sentence
- 2) Convicts the lightest form of imprisonment in between other defendants found guilty in the case in question.

The provisions above still need further guidance in its application. Point 7 is continued, referring to the values in the above provisions. The Supreme Court hereby requests the judges to find out if there are people who can be categorized as criminal reporters and witnesses of cooperating actors can provide special treatment among others provide criminal relief and / or other forms of protection.

Legal protection for Justice Collaborators according to the pattern of convictions in the United States instructs federal judges to consider the following factors:¹⁷

- 1) The level of importance and usefulness of the assistance provided by the defendant in collaboration, by including the prosecutor's evaluation of the assistance provided.
- 2) The honesty, completeness and reliability of the information or testimony provided by the defendant.
- 3) The nature and extent of the assistance provided.
- 4) There are threats that arise, or the risk of threats that may occur to the defendant or his family because of his assistance given to the prosecutor.
- 5) Determine the time of assistance.

Based on this, the importance of factors on a person's worthiness is protected because of their cooperation and legal protection to ensure security and threats to the Justice Collaborator. Legal protection in accordance with SEMA No. 4 of 2011 freed or handed down the lowest sentence for the Justice Collaborator. And also special protection as follows:

- 1) Separation of places of detention, confinement or imprisonment from suspects, defendants and / or other prisoners from crimes revealed in the case of witnesses who cooperated in detention or undergo criminal offenses;
- 2) The filing of the case must be carried out separately from the suspect and / or other defendants in the criminal case reported or disclosed;
- 3) Postponement of the prosecution of him;
- 4) Delays in the legal process (investigation and

¹⁶Abdul Haris Semendawai, "Peran Perlindungan Saksi dalam Pengungkapan Tindak Narkotika", *Simposium*, FH Universitas Hasanuddin, Makassar, 2018.

¹⁷Lilik Mulyadi, *Perlindungan Hukum Whistleblower & Justice Collaborator*, (Bandung: PT. Alumsi, 2015), hlm. 154

prosecution) that may arise because of the information, reports and / or testimonies they provide; and / or

- 5) Give testimony before the trial without showing his face or without showing his identity.

Besides that, the Justice Collaborator actors were also given awards as follows:

- 1) Relief in prosecution demands, including demanding probation; and / or
- 2) The granting of additional remissions and other prisoners' rights in accordance with the prevailing laws and regulations if the Acting Witness who cooperates is a prisoner.

6. Conclusion

From the results of this legal research it can be concluded:

- 1) Although the Criminal Procedure Code is not mentioned, the concept of Justice Collaborator has been mentioned in various laws and regulations, such as in Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, Law Number 5 of 2009 concerning Ratification of the United Nations Conventions Against Transnational Organized Crime (United Nations Convention Against Organized Transnational Crime), Law Number 31 of 2014 concerning Witness and Victim Protection, Supreme Court Circular Letter (SEMA) Number 4 of 2011, Joint Regulation of Kemenkumham, Polri, Attorney General's Office, KPK and LPSK in 2011.
- 2) The mechanism for the use of justice collaborator has not been clearly regulated either in the laws or regulations. Therefore, to optimize the role of justice collaborator there needs to be a special arrangement by including the word justice collaborator in the laws or regulations below. In practice in law enforcement, for example, provide relief or remission (punishment) to the perpetrators (not the main perpetrators), then strengthen legal protection and give awards to justice collaborators who want to cooperate with law enforcement agencies.

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