

Legal Protection of A Witness Cooperating Offender (Justice Collaborator) In Exposing The Criminal Acts of Corruption

Arini Asriyani

¹ *Students Of The Master Of Science Of Law Graduate School University Muslim Of Indonesia*
Corresponding Author: Arini Asriyani

Abstract: The purpose of this study is to identify and analyze legal protection arrangements for Justice Collaborators in Indonesian Corruption Act and to analyze what factors influence the application of legal protection against witnesses of cooperative actors (Justice Collaborator) in the criminal act of Corruption in Indonesia. This research uses empirical law approach, so can know the level of effectiveness of Justice Collaborator in law enforcement of Corruption Crime. The results showed that, Witnesses The Justice Collaborator in his / her rights is a particular offender, but not the principal actor, who acknowledges his actions and is willing to cooperate to be a witness in the judicial process and wishes to mention that the person concerned has provided very strong evidence and evidence significant to reveal the criminal acts of corruption that occurred.

Keyword: *Legal Protection, Justice Collaborator*

Date of Submission: 16-02-2018

Date of acceptance: 03-03-2018

I. INTRODUCTION

Indonesia as a State law is expressly mentioned in the explanation of the 1945 Constitution of the Republic of Indonesia "after amendment" namely Article 1 paragraph (3) explains Indonesia is a state based on the law (*rechtsstaat*). The indication that Indonesia embraces the concept of welfare state is in the obligation of the government to realize the objectives of the State as contained in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, namely to protect the whole Indonesian nation and the entire Indonesian blood sphere, to promote the general welfare, to educate the nation and to execute the order of the world. In a State of law, the rights and obligations of every citizen are equal. This is expressly disclosed in the 1945 Constitution of Article 27 paragraph (1) which states that: "Every citizen shall be at the same time in law and government, and shall uphold the law and government without exception."

The development of criminal acts of corruption in Indonesia is still relatively high, so it can be said that corruption as a virus that easily spread throughout the body of government and tend to experience significant improvement from year to year both in quality and quantity so it becomes one of the national crucial problems. Such corruption progression has relevance to power because with that power the ruler may abuse his power for his personal, family, group and cronies interests.

The criminal act of corruption is a crime that is difficult to be eradicated because the perpetrators of corruption usually have strong economic and political position, so that the criminal act of corruption is classified as "*white collar crime, crimes as business, economic crimes, official crime*" dan Corruption in Indonesia is like an outbreak of disease that has spread and spread throughout the community. In the past corruption has often been interpreted for State officials or civil servants who misuse state finances, but the current problem of corruption is not only for state officials or civil servants but has involved various institutions such as legislative, judiciary, bankers, conglomerates and corporations. To be able to disclose the perpetrators of corruption that have a strong economic and political position certainly requires the courage of a witness who directly knows the criminal act of corruption or directly involved in it and dare to report the incident, called "Justice Collaborator".

The issue of Justice Collaborator is a complicated and interesting phenomenon in a conception of legalization and regulation. Whether a Justice Collaborator is a key actor or not a key actor, whether a special reward (punishment) or punishment is required as it is necessary to uncover a crime that can be categorized as a serious crime and a crime scandal. It must be admitted that the success of law enforcers in disclosing and proving a crime depends heavily on the willingness of a witness and / or victim to provide truthful information before the trial as a witness. The position of a witness is very important in a criminal justice process since the witness has information based on what he saw, heard and experienced about or related to the crime. The information the witness has is very important to search for and find the material truth as desired and be the goal of the criminal justice process.

Judged from a terminological perspective, the Justice Collaborator is defined as a "secret leak", "cooperative actors' witness", "collaborator with justice", "supergrass" "pentito" / "collaboratore della giustizia" or even ". The Supreme Court in its latest development through the Supreme Court Circular Letter Number 04 Year 2011 on the Treatment of Criminal Reporting and Justice Collaborator in Cases of Criminal Acts mentioned as a criminal reporter is a person who knows and reports the crime certain and not part of the perpetrators of his reported crime, so that a Justice Collaborator is one of the perpetrators of certain crimes, acknowledging the crime he committed, not the principal perpetrator of the crime and giving testimony as a witness in the judicial process, Firman Wijaya (2012 : 23). The development of the idea of Justice Collaborator is actually based on the provisions of Article 37 paragraph (2) of the United Nations Convention Against Corruption (UNCAC) Year 2003 which has been ratified by Indonesia through Law Number 7 Year 2006 on Ratification of United Nations Convention Against Corruption Anti Corruption 2003) whereby it is affirmed that, "Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention". Then in Article 37 paragraph (3) of UNCAC it was argued that, "Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention".

In the provisions of Indonesia's positive law, the Criminal Procedure Code, which is touted as a masterpiece and one of the highest achievements of the Indonesian nation in the field of law, Teguh Sulistia and Aria Zurnetti (2011: 9) has listed a few provisions that have paid attention to human rights suspect / defendant. This is stated in the provisions of Article 108 Paragraph (1) of the Criminal Procedure Code which stipulates that anyone who experiences, sees, witnesses or becomes a victim of a criminal act is entitled to file a report or complaint with both oral and written investigators and or investigators. In addition to Article 117 Paragraph (1) it is determined that in the judicial process a witness has the right to provide information to the investigator without pressure from anyone and in any form, Friedrich Cj (2010: 45). The legal instruments available to provide protection to the Justice Collaborator are contained in Law No. 13 of 2006 jo. Law Number 31 Year 2014 on the Protection of Witnesses and Victims (LPSK), Article 10A Paragraphs (1), (2) and (3) states that:

- (1) Witnesses may be given special treatment in the process of examination and appreciation of the testimony given;
- (2) Specific handling as intended in paragraph (1) shall be in the form of:
 - a. Separation of place of detention or place of crime between Witnesses and suspects, defendants and / or prisoners exposed to their crime
 - b. the separation of the filing between the file of the Witness of the Perpetrator and the file of the suspect and the defendant in the investigation process, and the prosecution of the offenses he / she discloses; and / or;
 - c. giving testimony before the court without facing the defendant directly exposed to his crime.
- (3) The award of testimony as referred to in paragraph (1) shall be in the form of:
 - a. Relief of criminal penalty; or
 - b. Parole, additional remissions, and other prisoners 'rights in accordance with the provisions of the laws and regulations of the Witnesses of Prisoners with inmates' status.

Furthermore, Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 concerning the Eradication of Corruption (Act of Corruption), in Article 31 Paragraph (1) states that in the investigation and examination in court, witnesses and other persons concerned with corruption are prohibited mentioning the name or address of the complainant, or any other matters that provide the possibility of knowing the identity of the complainant. Similarly, Law Number 30 Year 2002 on the Corruption Eradication Commission, Article 15 provides that the Corruption Eradication Commission is obliged to provide protection to witnesses or reporters who submit reports or provide information about the occurrence of corruption. *Justice Collaborators can play a major role in revealing corrupt practices of public institutions, governments and private companies. Therefore, the implication is that without the system of reporting and protection of Justice Collaborator, public participation to uncover the allegation of crime is low so that the practice of deviation, violation, or crime increases. However, the actual dimensions of Justice Collaborator are not only oriented in the context above. This broader aspect can be said Justice Collaborator from the perspective of the formulation as well as its practice poses a dilemma that is in the position of how someone placed the Justice Collaborator. This means, from the perspective of the Indonesian criminal justice system in a position where the existence of a person can be referred to as a Justice Collaborator whether partial investigation, prosecution, trial, or collaborative level at all levels is possible.* The presence of Justice Collaborator aims to facilitate the proof and prosecution and can fully disclose a crime, especially related to the crime of corruption that was never done alone but collectively,

the existence of the provisions governing the Justice Collaborator is a legal instrument that is expected to strengthen the collection of evidence and evidence at the hearing. Therefore, it is increasingly important and demanded to be maximum to protect witnesses and victims including the protection of Justice Collaborator in order to uncover sophisticated and organized cases. Because it is realized that the position of witnesses is very vulnerable to get threat / intimidation for the safety of body and soul and the continuity of their future or even potential to be criminalized. Although it has been regulated in legislation as well as a number of internal rules and regulations together, but the granting of Justice Collaborator status is still often ignored, Justice Collaborator has not been maximally utilized and in reality there are still many Justice Collaborators also accept the same law with other suspects. This means that its role to disclose crimes more broadly, deeper, faster, has not been taken into account at all by law enforcement.

II. PROBLEM FORMULATION

Based on the background that has been described in the context above can be formulated the focus of research problems are as follows:

1. What is the legal protection arrangement for a Justice Collaborator in the Indonesian Corruption Act?
2. What factors affect the application of legal protection against a witness of the collaborating agent (Justice Collaborator) in corruption in Indonesia?

III. THEORETICAL FRAMEWORK

The concept of the State of Law (The Rule of Law)

The concept of the State of Law is actually Thought about the state of law had emerged long before the revolution of 1688 in England, but only reappeared in the XVII century and became popular in the XIX century. The background of the thought of the state of law is a reaction to past arbitrariness, Ni'matul Huda (2005: 95). According to Aristotle the concept of a state of law is a state which stands above the law that guarantees justice to its citizens, justice is a requirement for the achievement of life's happiness for its citizens, and as a basis of justice it should be taught a sense of morality to every human being to become a citizen well, for Aristotle who reigns in a state not a human being is actually just a law and balance only, Moh. Kusnardi and Harmaily Ibrahim (1998: 153).

The use of a legal state other than *rechtstaat* is also known as The Rule of Law in the UK and the Government of Law, but not of man, Ni Matul Huda (2006: 73). The concept of the State of Law in Continental Europe was developed among others by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term "*rechtsstaat*". Whereas in the Anglo American tradition, the Concept of State law was developed over the pioneering A.V. Dicey with the title "The Rule of Law", can be seen from the opinion of Hilaire Barnett (2011: 52), states that "The essence of the rule of law is that of the sovereignty or supremacy of law over man". (the essence of The Rule of Law is the sovereignty or legal supremacy of man).

According to German jurist Friedrich Julius Stahl (1802-1861) states that the principles of a legal state must be met, namely: (1) The existence of recognition of human rights; (2) There is a separation of powers; (3) The government shall be governed by law (written law); (4) The existence of administrative court, Munir Fuady (2009: 27). According to Plato, good state governance is based on the rule of law. There are basically two kinds of government that can be organized, the government formed by way of law, and government that is formed not through legal means, Budiono Kusumohamidjojo (2004: 36: 37).

The provisions on Indonesia as a legal state are found in article (3) of the 1945 Constitution which expressly states that Indonesia is a state of law, and not based on mere power will only create dictatorship and arbitrariness. The judge actually makes that power "legitimate" by referring to the mechanisms of conduct and the limits of an action. The judiciary must be "independent" from government influence. The protection of human rights must be carried out in practice, La Ode Husen (2009:55).

The State of Indonesia is a legal state (*rechtsstaat*) as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) the Third Amendment. Conceptually the theory of a state of law upholds the legal system that ensures legal certainty (*rechts zekerheids*) and protection of human rights (human rights). In essence, a state based on law must guarantee the equality of each individual, including the freedom of an individual to exercise his / her rights.

The elementary substance in a law state besides equality is also restriction. These power limits also vary, depending on circumstances. However, the means employed to limit both interests are the law. Neither the state nor the individual is a legal subject with rights and obligations. Therefore, within a country of law, the position and relationship of the individual with the state is always in equilibrium. Both have rights and obligations that are protected by law.

The Concept of Law Enforcement

Law enforcement is an attempt to realize the ideas and legal concepts that people expect to become reality, law enforcement is a process that involves many things. Dellyana, Shant (1988: 32). In the concept of law enforcement, Joseph Goldstein distinguishes criminal law enforcement into 3 (three) namely:

a. *Total Enforcement Concept;*

The concept of total enforcement concept that demands that all values that exist behind the legal norms are enforced without exception.

b. *Full Enforcement Concept;* dan

The concept of full enforcement concept that realizes that the total concept needs to be limited by procedural law and so on for the protection of individual interests.

c. *Actual Enforcement Concept.*

The concept of actual law enforcement that emerges after it is believed that discretion in law enforcement is due to limitations, whether related to the advice of the infrastructure, the quality of its human resources, the quality of its legislation and the lack of community participation.

The full concept calls for the limitation of the total concept with a formal law in the framework of the protection of individual interests. The concept of actual law enforcement comes after it is believed that discretion in law enforcement is due to existing limitations and a lack of community participation. When associated with the legal protection of the Justice Collaborator in a criminal act of corruption which in law, in law enforcement can be used as a means to provide fair legal protection to the Justice Collaborator so that they will cooperate with law enforcement officials to dismantle the facts of more crime big again in the future. In addition to the principles, concepts, and doctrines of scholars, in exploring the problems in this study used several theories, among others, Theory of Justice (John Rawls), Theory of Utilization (Jeremy Bentham), Theory of Legal Protection (Philipus Hadjon) and Theory of Law Development (Mochtar Kusumaatmadja). Consistency of Justice Theory and Legal Protection Theory is used as a knife of analysis to discuss issues concerning the regulation of legal protection against Justice Collaborator in Corruption Law while the Utilization Theory and Development Law Theory is used to explore the second problem concerning the formulation of the concept of criminal justice protection policy of Justice Collaborator in the future.

Theory of Justice

The Theory of Justice is used in this research because that in Indonesian law state, criminal detention and trial process must remain in the framework of legal corridor based on the principle of justice. The role of the Justice Collaborator reveals the expected case can be the basis of how the judge handed down the criminal to the real perpetrator (actor intellectual). In addition, in the legal state of Indonesia should also be given the protection and reward on the role of Justice Collaborator in disclosing the case so that it is expected later on many people who are brave and willing to become a Justice Collaborator.

This aspect and dimension should be put forward, because in a legal state it is expected that all people who violate the law must be prosecuted in accordance with the applicable law with the point of departure to the dimension of justice. The judge in trying cases with the involvement of a Justice Collaborator should be obliged to explore, follow, and understand the legal values and sense of justice living in society. The values of law and sense of justice living in society have a meaning similar to Eugen Erlich's opinion with living law theory, which is a law developed and still adhered to by members of indigenous communities around the area Romli Atmasasmita (2013: 133). In addition, when a judge adjudicates a case involving a Justice Collaborator, the judge's judgment reflects and also diminishes justice (*gerechtigheit*), in addition to legal certainty (*rechtszekerheid*) and expediency (*zweckmassigkeit*) as introduced by Gustav Radbruch. Speaking of justice dimension, John Rawls affirms the idea of justice as fairness, a theory of justice based on the traditional conception of social contract to a higher level of abstraction.

According to John Rawls, there are at least two basic principles governing justice. First, the principle that everyone has equal rights over all the same great fundamental freedoms, which can be harmonized with the same system of others John Rawls (2011: 49). Second, states that social and economic inequality should be regulated in such a way as to produce the most optimal benefits for those least benefited, and provide an equal access system for all positions in equal opportunity Darji Darmodiharjo and Shidrata (2006: 137). Through John Rawls's system it can be understood to be a general conception of fairness, because it places the equality, the principle of the greatest equality of opportunity, and the imbalances or inequalities

Conclusions and basic essence of the law state, the opinions of Eugen Erlich, Gustav Radbruch and John Rawls then when the judge adjudicates the case with the involvement of a Justice Collaborator the judgment judgment should reflect and diminish justice, in addition to legal certainty and expediency. These aspects and dimensions are needed so that people become courageous, unafraid, willing and willing to become a Justice Collaborator so that the case can be revealed more the role of Justice Collaborator as well as in the

context of the legal state of course by staying on the principle of presumption of innocence, , everyone is equal before the law, and equality before the justice.

Theory of Legal Protection

The theory of legal protection derives from natural law theory or the flow of natural law. This flow was pioneered by Plato, Aristotle (Plato's disciple), and Zeno (founder of Stoic flow). According to the flow of natural law states that the law is sourced from God that is universal and eternal, and between law and morals should not be separated. Philipus M. Hadjon's argued that view that the legal protection for the people as a preventive and repressive government action H. Salim and Erlies Septiana Nurnani (2013: 264). Preventive legal protection is a preventive legal protection. Protection provides an opportunity for the people to file an objection (inspraak) on his opinion before a government decision gets a definitive form. Thus, the protection of this law aims to prevent the occurrence of disputes and is very meaningful for the actions of government based on freedom of action. And with the prevention of preventive law this encourages the government to be careful in making decisions, and the people can file objections or be consulted about the decision plan.

According to Fitzgerald, he describes Salmond's legal guardian theory that laws aim to integrate and coordinate interests in society because in a traffic interest, the protection of a particular interest can only be done by limiting interests on the other. Satijipto Raharjo (2000: 53).The seriousness of mankind will be longing for justice, is the essence that hopes for a law higher than positive law. The law of nature has shown that the essence of truth and justice is a concept that includes many theories. Various assumptions and opinions of philosophers of law emerged from time to time. In the seventeenth century, the substance of natural law has placed a universally perfected principle that can be called human rights.Marwan Mas (2004:116).

IV. DICUSSION

Legal proection of Justice Collaborator

With regard to the legal protection of Justice Collaborator in the criminal justice system in Indonesia, a person who voluntarily becomes a Justice Collaborator should be granted a protection that can be either a reward or a reduction in punishment and freedom from punishment or demand that a Justice Collaborator can provide accurate information without covered.

Justice Collaborator in Recommendation Rec (2005) of the Committee of Ministers to member states on the rotation of the witnesses and collaborators of justice states that, "collaborator of justice" means any person who faces criminal charges, or has been convicted of taking part in a criminal association or other criminal organization of any kind, or in the offense of corruption, but who agrees to cooperate with criminal justice authorities, especially by giving testimony about a criminal association or organization, or about any offense connected with corruption or other serious crimes ". (Free translation: Justice Collaborator is any person who faces criminal charges or has been assigned to take part in an association of criminal offense or other criminal organization or especially corruption, but he agrees to cooperate with criminal justice officials by giving testimony about the association or organization criminal offense or any crime related to criminal acts of corruption and other serious crimes).

Later in the Protection Act of Justice Collaborator and Witness of the Republic of Albania (Republic of Albania The Assembly Law No. 9205, Dated 15/03/2004 On The Justice Callaborators and Witness Protection), in chapter 1 article 2 it is defined that: "*A collaborator of justice is considered a person that serves a criminal sentence or a defendant in a criminal proceeding, toward whom special measures of protection have been applied due to callaboration, notifications and declarations made during the criminal proceeding on the offences provided in letter "e" of this article, and for these reasons is in a real, concrete or serious danger*".

Basically Justice Collaborator in the law of the Republic of Albania is defined as a person who is serving a criminal sentence or a suspect / defendant in the criminal justice process, which requires special handling of protection because the person has cooperated, gave testimony, and statements made during the trial process where the criminal concerned is experiencing a real, real, and serious danger situation.

The Legal Mafia Eradication Task Force defines Justice Callaborator as a cooperative actor (either in witness, reporter or informant status) who provides assistance to law enforcement in the form of, for example, providing important information, strong evidence, or testimony at under oath, which may disclose a crime in which the person is involved in the reported crime (or even an offense).Praktek perlindungan *Justice Collabolator* di Indonesia dilakukan terhadap Vincentius Amin Sutanto, Agus Condro Prayitno, Yohanes Waworuntu dan Endin Wahyudin. Kemudian di negara asing, misalnya pada Colen Rowey (Amerika Serikat), Jeffrey Wigand (Amerika Serikat), Shanmughan Manjunath (India), Yoichi Mitzuni (Jepang), dan lain sebagainya.

Forms Legal protection of Justice Collaborator in Indonesian Criminal Justice system.

Legal protection can be interpreted as any form of protection that is regulated and based on laws and regulations based on legal certainty. In general, the meaning or definition of protection in several laws and regulations is regulated differently, among others: according to Article 1 of Government Regulation No. 2 of 2002 states that "Protection is a form of service that must be carried out by law enforcement or security apparatus to provide a good physical security as well as mental, to victims and witnesses, from threats, harassment, terror, and violence from parties and, provided at the stage of investigation, investigation, prosecution, and or examination in court.

Whereas in Article 1 paragraph (1) of Government Regulation Number 24 Year 2003 states that: "Protection is a guarantee of security provided by the state to Witnesses, Investigators, Prosecutors and Judges of violence and / or threats of violence in cases of terrorism."

Comprehensive legal protection of Justice Collaborators should apply at all stages of the judiciary (from the stage of reporting, investigation, investigation, prosecution and examination in court) and after the judicial process is over. This is because sometimes under certain conditions in a particular offense, the threat and terror of any Justice Collaborator will continue to follow after the criminal justice process is over. The appearance of the defendant's vengeful or convicted revenge that has been reportedly criminalized, it is relatively possible to create discomfort and create a danger to the life of the corresponding Justice Collaborator. In addition, legal protection also needs to be given not only to Justice Collaborator but also better to include his family, because the security and comfort of their families will directly affect the peace and comfort in performing its function as a disclosure of facts.

Based on the above explanation, there are generally four forms of protection against Justice Collaborator including physical and psychological protection, special handling, legal protection and rewards. In detail can be described as follows:

Protection of the physical and psychic

It is a necessity that anyone who mademized himself as a Justice Collaborator will face threats, terror, even violence against himself, soul, psychic and property and his family. The decision to become a Justice Collaborator is the hardest decision of their lives, because all the comforts and safety of themselves and their families will be disturbed. Moreover, if the crime he revealed is a criminal act that is a type of corruption, which in fact the main actors and intellectuals are influential people and have mass or large followers and have a position or a strategic position governed, then of course intimidation not only comes from perpetrators only but also from the perpetrator's family as well as those who do not accept the act of disclosure of facts by the Justice Collaborator.

The logical consequence is that the sacrifices of the Justice Collaborators should be appreciated by law through their safeguard formulation policy. In addition, considering the dismantling of facts about the reported criminal act they will become an effective means for law enforcement to deal with criminal acts, especially those with corruption. Thus, the law enforcement commitment in providing protection for the security of the Justice Collaborator will have an impact on the effectiveness and efficiency of the settlement process.

The safeguards that the Justice Collaborator can provide can be physical and psychological protection. Physical and psychological protection is not only applied to personal security in the form of protection from all kinds of threats, terror, violence, pressure, disturbance to themselves, soul and their property from any party, but also must include protection of physical and psychological protection for their family, Hamdan (2012: 82). Strictly speaking, the Justice Collaborator can be more secure, calm and comfortable and without any burden / pressure during the process of report submission, information, testimony at all stages of judicial examination. In the context of protection of security, technically, the physical and psychological protection of Justice Collaborator and his family should be adjusted according to Law Number 2006 jo Law Number 31 Year 2014 stipulates that a Witness shall have the right:

- a. Obtain protection for his or her personal, family, and property security, and be free from threats relating to testimony that he or she will, have, or have given;
- b. Participate in the process of selecting and determining forms of protection and security support.
- c. Giving information without pressure;
- d. Get a translator;
- e. Free from trap questions;
- f. Obtain information on case developments;
- g. Obtain information about court decisions;
- h. Knowing in the event that the convicted person is released;
- i. Got a new identity;
- j. Getting a new residence;
- k. Obtain replacement of transportation cost as needed;

- l. Get legal advice; and / or
- m. Obtain the provision of temporary living expenses until the end of the protection period.
- n. Obtain mentoring in investigations up to trial in court;
- o. Get a temporary residence and / or
- p. Can not be prosecuted either criminal, administrative or civil liability for testimony, other information that will be, is or has been given.

Unfortunately, the protection as described above applies only to the witness, who is the person who can provide information for the purpose of investigation, investigation, prosecution and examination in the court of a criminal case that he hears himself, he sees it himself, and / or he / she is alone.

It also needs to be revised in relation to the provision stating that the witness of a criminal offense that can be given protection is limited to a witness of a criminal offense in "certain cases" in accordance with "the decision of Witness and Victim Protection Agency (LPSK)". So outside of the LPSK decision, it can not be given maximum protection. Especially with the system of application for protection first to LPSK, which then continued with process of time and energy valuation from Justice Collaborator so that bureaucratization will make it difficult for those who have limited access for example that is in remote area which notabene far from Office LPSK in Jakarta then this will certainly make their protection services less effective and efficient.

Thus if the existence of LPSK is still maintained and functionally also required as one of the sub-system of criminal justice as other law enforcement (to strengthen LPSK accommodated and strengthened its authority in reformulation of criminal procedure law in order not to overlap with law enforcement and dispel assumption mutual intervention), it is necessary to establish LPSK offices in the region, even if necessary in every district and city. However, if the existence of LPSK which incidentally is ad hock and its existence is only temporary while waiting for improvement process of paradigm of witness protection, reporter and Justice Collaborator from law enforcement then of course LPSK representative offices in the area is not needed, considering the State budget will be very Hugh.

Judging from the perspective of simple, quick and cost-effective justice principles, the fattening of the institution of the criminal justice system will gradually slow down the process of settling criminal cases. So the authority of witness protection, Justice Collaborator is attached to the internal unit of law enforcement. For example, such as special protection units in the police, prosecutors or courts.

Technically, the coordination mechanism of physical and psychological protection in its development is regulated in a Joint Regulation. The dimensions of this joint regulation set up coordination mechanisms concerning physical and psychological protection requests for reporting or reporting witnesses submitted by Reporting or reporting parties to LPSK, or to law enforcement officers in accordance with their stages of handling (investigators, prosecutors or judges) to be forwarded to LPSK, or implemented in accordance with applicable laws and regulations. In the application of protection received by LPSK, then LPSK shall provide protection which its implementation is coordinated with law enforcement apparatus. In the event that the application for protection is received by law enforcers, law enforcement officers must coordinate with LPSK. While the physical and psychological protection mechanism for the justice collaborator is called by the law enforcement apparatus according to the handling stage (investigator, public prosecutor or judge) to LPSK.

Physical and psychological protection for witnesses of cooperating actors is decided by LPSK based on recommendation from law enforcement apparatus according to the handling stage (investigator, public prosecutor or judge), Sigit Artantoati (2012: 96).

In addition to providing physical and psychological protection facilities as described above, to support efforts to provide security protection for Justice Collaborator who gave testimony in the hearing, it is possible to be given special handling as stipulated in Article 10A of Law Number 13 Year 2006 jo Law Number 31 Year 2014 in the form of: a) Separation of place of detention or place of crime between a Witness of a Doer with a suspect, defendant and / or prisoner exposed by his crime;b) Separation of the filing between the Witnesses' files with the suspect's files and the defendant in the investigation process, and prosecution of the offenses he / she prosecutes; and / or;c) Giving testimony before the court without facing the defendant directly exposed to his / her crime.

Legal protection in question is the protection of "legal status", as referred to in Government Regulation Number 71 Year 2000. The form of protection of legal status is technically such as the non-continuing defamation report by suspects of corruption acts against the reporting witness before there is a legal process against the corruption case was completed first. Strictly speaking, with other words the legal process of corruption case must take precedence over the defamation charges by the suspect against the witness of the corruption criminal reporter. However, the protection of such "legal status" will be canceled if there is sufficient evidence to confirm the involvement of the reporting witness in the reported and witnessed criminal act of corruption. Therefore, in this case, such reporting witness is only given protection against security during the process of corruption criminal justice examination.

Implementation of the concept of protection of cooperating person as contained in Article 10 paragraph (1) of Law Number 13 Year 2006 jo Law Number 31 year 2014 is a criminal law policy (penal policy) which has been very appropriate considering the proof of a crime committed by the modus operandi systematic and organized. The task felt by the public prosecutor or the police if in a criminal act is very difficult to collect evidence in the form of witnesses who see themselves, hear themselves or experience themselves a crime where the perpetrators perform their actions neatly and organized, Imam Thurmudhi (2011: 60).

In addition, there is often a "counterattack" of key perpetrators of a crime when they are reported by the Justice Collaborator by reporting defamation crimes as well as criminal acts of unloving behavior, and some are reported to be either criminal or civil. Against this phenomenon, the provisions of Article 10 paragraph (1) of Law Number 13 Year 2006 jo Law Number 31 Year 2014 can be a "fresh air" for the Justice Collaborator to stay focused on disclosing the fact of the crime without being burdened by legal cases reported by the reported party. Moreover, the provision is reaffirmed by the Supreme Court Circular Number 4 of 2011 stipulates that when reporters of criminal acts are reported also by the reported, the handling of cases on reports submitted by criminal reporters takes precedence over reports from reported.

Meanwhile, for Justice Collaborator, the provision of Article 10A paragraph (2) of Law Number 13 Year 2006 jo Law Number 31 Year 2014 becomes the legal umbrella to get an award in the form of leniency relief. For Justice Collaborator who notabenen Whistleblower who also as a perpetrator of crime allegedly has made a mistake and therefore very easy to prove it in court. What makes it possible for him to be free from any lawsuit as contained in Article 191 Paragraph (2) of the Criminal Procedure Code stipulates that if the court is of the opinion that the act of accusation against him is proven, but the act is not a crime, then the defendant is cut off from all lawsuits. It's just that to get rid of any lawsuit is also difficult because Whistleblower who is also a suspected criminal offender has made a mistake, his actions are not included in the basic framework of criminal elimination, Imam Thurmudhi (2012: 64). Therefore this provision brings several problems and weaknesses.

There are several opinions on the issue of the existence of this provision. According to Eddy OS Hiariej, Article 10 paragraph (2) of Law Number 13 Year 2006 jo Law Number 31 Year 2014 is contrary to the spirit of Whistleblower, because this article does not fulfill the principle of protection against a Whistleblower, where the relevant person will still be sentenced to criminal The crime, further Eddy OS Hiariej (2010: 14), provides an assessment that Article 10 paragraph (1) and paragraph (2) of Law Number 13 Year 2006 there are 3 (three) ambiguities:

- a. Witnesses who are also suspects in the same case will remove the defendant's executive rights, this is one element of judicial objectivity. When Whistleblower is a witness in court, his statements are valid as evidence if pronounced under oath, but if Whistleblower is a defendant, the statements given are not under oath;
- b. Whistleblowers who have two different statuses as witnesses as well as suspects cause to be ambiguous, who will be tried first or trial simultaneously;
- c. The provisions of Article 10 paragraph (2) of Law Number 13 of 2006 are contra legem with paragraph (1) in the same article and the same law, essentially mentioning that the witness, the victim and the complainant can not be prosecuted either criminal on the testimony report which will, medium or has been given. Article 10 paragraph (2) of Law Number 13 Year 2006 jo Law Number 31 Year 2014 makes the understanding of the witness who is also a suspect can not be exempt from lawsuits both criminal and civil. This means that at the same time a witness may be a suspect, although according to Article 10, paragraph 2, it is possible to grant leniency to Whistleblower, but that possibility still can not make a Whistleblower will breathe a sigh of relief or even getting someone interested in becoming a Whistleblower.

To provide guidance for the protection of "legal status" and the implementation of the provision of Article 10 of Law Number 13 Year 2006 in conjunction with Law Number 31 Year 2014, the Supreme Court shall issue the Supreme Court Circular Letter Number 4 Year 2011. The progressive step of this Supreme Court very appropriate given the provisions of article 10 is still need further guidance in its application. The Supreme Court in SEMA asks the judges to find out that there are persons who can be categorized as criminal offenders and witnesses who cooperate can be given criminal relief and / or other forms of protection.

Technically, for the witness of the collaborating agent (Justice Collaborator), this SEMA provides the relevant criteria that is not the principal perpetrator of the crime and he acknowledges the crime and provides testimony as a witness in the judicial process. It is also required that a statement from the public prosecutor be required that the person concerned has provided information and evidence so significant that the investigator and / or public prosecutor may effectively disclose the offense, exposing other actors with more roles and / or return the assets / proceeds of a crime.

Thus the Justice Collaborator may consider criminal imposition with a special conditional probation and / or impose a lighter jail sentence among other guilty defendants. However, in the case of special treatment in the form of criminal waivers the judge shall still consider the sense of community justice. In addition the Chief Justice is urged to distribute cases relating to cases disclosed by witnesses of perpetrators cooperating to

the same panel of judges to the extent possible and prioritizing other cases revealed by witnesses of cooperating actors. Protection in the form of appreciation for the Justice Collaborator is very important for the creation of a climate conducive to the disclosure of corruption in the context of community engagement. The award deserves to be given as an affirmation that the concerned has been instrumental to law enforcement efforts, the implication that if there is an appreciation of them other people can dare to also reveal a criminal offense to law enforcement.

Protection in the form of appreciation for the Justice Collaborator may be relief of criminal penalty, parole, additional remissions and other prisoners' rights in accordance with applicable legislation where the cooperating Witnesses of the Actors is a prisoner. In order to obtain an award in the form of a criminal complaint, LPSK provides a written recommendation to the public prosecutor to be published in the suit to the judge. To obtain the award of additional remissions, and other prisoners' rights, LPSK provides a written recommendation to the minister who administers government affairs in the field of law.

V. CONCLUSION

1. Witnesses The Justice Collaborator in his / her rights is a particular offender, but not the principal actor, who acknowledges his actions and is willing to cooperate to be a witness in the judicial process and wishes to mention that the person concerned has provided very strong evidence and evidence significant to reveal the criminal acts of corruption that occurred.
2. Legal protection (Besil Protection, Rechtsbercherming) is a protection provided by law to the legal subject of rights and obligations (substantive) including physical and mental protection that is preventive or refresive, in legal science is a form of service shall be carried out by law enforcement or security apparatus to provide a sense of security, both physically and mentally to victims and witnesses of threats, harassment, terror and violence from any party given at the stage of investigation, investigation, prosecution, and court hearing in court .

REFERENCES

- [1]. Dellyana, Shant 1998, *Konsep Penegakan Hukum*. Yogyakarta: Liberty.
- [2]. Firman Wijaya, 2012, *Whistle Blower dan Justice Calloborator Dalam Perspektif Hukum*, Penaku, Jakarta
- [3]. Fajar Mukti & Yulianto Achmad, 2007, *Dualisme Penelitian Hukum*, Pensil Komunika, yogyakarta.
- [4]. Friedrich Cj, 2010, *Filsafat Hukum Prespektif Historis*, Nuansa dan Nusamedia Bandung
- [5]. Hilaire Barnett Constitutional & Administrative law, koutledge, London and New york, Eight Edition, 2011 hlm 52.
- [6]. Kelsen, Hans, 2012, *Pengantar Teori Hukum*, Nusa Media, Bandung
- [7]. La Ode Husen, 2009, *Negara Hukum, Demokrasi dan Pemisahan Kekuasaan*, UMI-Toha, Makassar
- [8]. Moh. Kusnardi dan Harmaily Ibrahim, 1998, "Pengaturan Hukum Tata Negara Indonesia", PSHTN FH UI dan Sinar Bakti, Jakarta,
- [9]. Mochtar Kusumaatmadja, 1976 "Hukum Masyarakat dan Pembinaan Hukum Nasional", Bina Cipta, Bandung, hal. 5.
- [10]. Mahfud MD, 1999, "Pergulatan Politik dan Hukum Indonesia", Gema Media, Yogyakarta.
- [11]. Muladi, 2002, *Kapita Selektta Sistem Peradilan Pidana*, Badan Penerbit Universitas Diponegoro, Semarang
- [12]. Mulyadi, Lilik, 2007, *Tindak Pidana Korupsi di Indonesia: Normatif, Teoritis, Praktis*, dan Masalahnya, PT. Alumni, Bandung
- [13]. Munir Fuady, *Teori Negara hukum (Rechstaat)* Bandung, Refika Aditama, 2009,
- [14]. Mertokusumo, Sudikno, 2004, *Penemuan Hukum, Penerbit Liberty*, Yogyakarta
- [15]. Moeljatno, 2008, *Asas-Asas Hukum (Edisi Revisi)*, Rineka Cipta, Bandung\
- [16]. Miram Budiarjo, *Dasar-dasar Ilmu Politik*, Gramedia, Jakarta, PT. Gramedia Pustaka utama 2007
- [17]. Ni' matul Huda 2005, *Negara Hukum, Demokrasi & Judicial Review*, Penerbit UII Press Yogyakarta.
- [18]. _____, *Hukum Tata Negara Indonesia* Jakarta, Raja Grafindo Persada 2006..
- [19]. Muhadar, 2009 *Perlindungan Saksi dan Korban dalam Sistem Peradilan Pidana*, Putra Media Nusantara, Surabaya
- [20]. Muhammad Tahir Azhary, 2004, *Negara Hukum (Suatu Studi Tentng Prinsip-Prinsip Dilihat Dari Segi Hukum Islam Implementasi pada Periode Negara Madina dan Masa Kini)*, Penerbit Bulan Bintang Jakarta.
- [21]. Salim, H. & Nurnani, Erlies Septiana, 2013, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, PT. Raja Grafindo Persada, Jakarta
- [22]. Satijipto Raharjo, "Ilmu Hukum", (Bandung: PT. Citra Aditya Bakti, 2000).
- [23]. Dempster, Quentin, 2006, *Whistleblower (Para Pengungkap Fakta)*, Elsam, Jakarta

- [24]. Philipus M. Hadjon 2007 Perlindungan Hukum bagi Rakyat di Indonesia Peradaban Jakarta.
- [25]. H. Elwi Danil 2011 Korupsi (Konsep, Tindak Pidana dan Pemberantasannya), PT Raja Grafindo Persada.
- [26]. Romli Atmasasmita 2013, Teori dan Kapita Selekta Kriminologi, Refika Aditama Bandung.
- [27]. John Rawls 2011, A Theory of Justice, (Penterjemah: Uzair Fauzan & Heru Prasetyo), Pustaka Pelajar, Yogyakarta.
- [28]. William H. Putman 2009, Legal research: Second Edition, Delmar, United States of America.

Arini Asriyani. "Legal Protection of A Witness Cooperating Offender (Justice Collaborator) In Exposing The Criminal Acts of Corruption." IOSR Journal Of Humanities And Social Science (IOSR-JHSS). vol. 23 no. 2, 2018, pp. 47-56.