

## The Ideal Form of Justice Collaborator's Role

Nining Purnamawati<sup>1</sup>, Muhammad Said Karim<sup>2</sup>, Farida Pattitingi<sup>2</sup>, Wiwie Heryani<sup>2</sup>

<sup>1</sup> Doctoral Program, Faculty of Law, Hasanuddin University, Makassar, Indonesia

<sup>2</sup> Faculty of Law, Hasanuddin University, Makassar, Indonesia

**Abstract:** This research aims to find out the ideal role of justice collaborators in disclosing corruption cases. This research is empirical law research. This research's primary and secondary data are categorized according to the data type before being analyzed using qualitative methods, i.e., analyzing data related to the problem being studied, then selecting based on logical thinking to avoid errors in the data analysis process. The findings show that the ideal form of the role of justice collaborator depends largely on how far the commitment of the apparatus in providing legal protection to the, how firm the willingness of law enforcement agencies and rule-makers to make a clear, firm, and the complete rule of law regarding justice collaborators. In addition, a clear article should be added to the Corruption Criminal Case about the reward for justice collaborators.

**Keywords:** justice collaborator, witness, corruption.

## 司法合作者角色的理想形式

**摘要：**本研究旨在找出司法合作者在揭露腐败案件中的理想角色。本研究为实证法研究。本研究将一手和二手数据按照数据类型进行分类，然后采用定性方法进行分析，即分析与研究问题相关的数据，然后根据逻辑思维进行选择，以避免数据分析过程中的错误。调查结果表明，司法合作者角色的理想形式在很大程度上取决于该机构在为司法人员提供法律保护方面的承诺程度，执法机构和规则制定者制定明确、坚定和关于司法合作者的完整法治。此外，应在贪污刑事案件中明确规定对司法合作者的奖励。

**关键词：**正义的合作者，证人，腐败。

## 1. Introduction

The law works as a protection for human interests. Therefore, a very important legal function is to smoothly implement the law because the violated law must be counteracted [1]. Then law enforcement can also be carried out through the criminal justice system, which aims to enforce criminal law, punish perpetrators of criminal acts, and provide guarantees for law implementation in a country. Mardjono Reksodiputro [1] defined the criminal justice system as a system in society to tackle crime problems by controlling crime within the limits of community tolerance.

Today, the criminal justice system in Indonesia recognizes the term justice collaborator. For the Indonesian context itself, Justice Collaborator is not a legal term because it cannot be found in the Criminal

Procedure Code or other laws and regulations governing the existence of a cooperating actor or a reporting witness. However, this term has been used and developed in Indonesian legal practice, which is spread in various types of regulations. Based on the author's initial trace, these regulations talk about protecting a whistleblower or a justice collaborator. That is important to do as a form of persuasion to handle a criminal act.

Lilik Mulyadi [2] explained that the persuasive model is comprehensive for protecting justice collaborators involving components of the Criminal Justice System, namely the police, the Attorney General's Office, Courts, and Correctional Institutions, and the KPK for corruption cases.

This persuasive model is one of the models of legal protection to protect justice collaborators. With this

persuasive model, all components in the criminal justice system[3] will coordinate with each other. For example, if a justice collaborator has given information to one institution, it is hoped that all institution components will be protected; comprehensive protection will be realized.

In practice in Indonesia, the role of a Justice Collaborator is consistently widely used in the process of uncovering cases of corruption [4, 5]

Judging from the regulations governing the justice collaborator, it is clear that the importance of protecting the complainant, reporting witness, and justice collaborator are important. One example is the case of alleged corruption by the witness of the collaborating perpetrator or Justice Collaborator, also in the corruption case on behalf of Defendant Indra Dilli Mulyawan at the Corruption Court at the Banda Aceh District Court Decision Number 25/Pid.Sus/TPK/2016/PN Bna. In this case, according to the panel of judges, the Defendant deserves to be called a Justice Collaborator in the quo case.

Not all applications for perpetrators who cooperate with law enforcement (justice collaborators) are accepted by prosecutors and judges, as seen in the case with Defendant Wahyu Setiawan in Decision Number: 28/Pid.Sus-Tpk/2020/PN.Jkt.Pst and the Defendant Imam Nahrawi on Decision Number 9/Pid.Sus/Tpk/2020/PN Jkt.Pst, against the Defendant's request that the Defendant is appointed as a Justice Collaborator, the Panel of Judges agreed with the Public Prosecutor that he could not determine the Defendant as a justice collaborator because the person concerned did not fulfill requirements as specified in SEMA 04/2011. Justice collaborator is not something that can be seen to ease the punishment for convicts because the imposition of a criminal based on the principle [6] consideration of the community's sense of justice should not be violated.

The urgency and role of a justice collaborator in uncovering a crime, especially in cases of corruption, does not always get an award or a request is granted. Therefore, the author believes that an in-depth theoretical and scientific discussion is needed regarding the factors that influence the role and effectiveness of justice — collaborators in disclosing corruption cases to be clearly articulated in various laws and regulations. Based on the description of the background of the problem above, the author formulates the problem points in this study as follows: What is the ideal form of the justice collaborator's role in disclosing corruption cases?

## 2. Method

The type of research used in this research is empirical legal research or socio-legal research [5], which is another approach model in researching law as an object of research, in this case, law based on the development of socio-legal research. The research was

conducted in Jakarta. The population of this study was all parties related to the formulation of this problem, namely the Attorney General's Office, the Supreme Court, and the Corruption Eradication Commission (KPK). A sample is based on a specific purpose. The sample consists of: the Attorney General's Office of the Republic of Indonesia: 2 people, the Supreme Court of the Republic of Indonesia: 2 people, and the Corruption Eradication Commission: 2 people. Data taken through interviews are then presented descriptively.

## 3. Results and Discussion

In law enforcement practice, Justice Collaborator is a fairly new phenomenon in the practice of corruption criminal justice. This study reviews the ideal form of the role and effectiveness of the Justice Collaborator both in terms of the theoretical interests of criminal law regarding corruption and practical interests. Latter assumes further review of the extent of the effectiveness of the disclosure and completion of criminal acts of corruption through the Justice Collaborator [6, 7].

The KPK's 2020 Annual Report explains that the development and movement of corruption are increasingly patterned and systematic. Its scope has also touched all aspects of people's lives across national borders [8]. On this basis, corruption is understood nationally as an extraordinary crime and a transnational crime. So far, the measuring index for the enforcement of criminal acts of corruption can be seen from the legal subjects' willingness to report suspected criminal acts of corruption. Another indicator would be the ability of the state to respond to these reports through its instruments and provide protection and promotion of performers.

There is still a blurry portrait of the handling of corruption cases; this can be seen from the many corruption cases [5] that have been revealed but are often incomplete in their disclosure. In line with this, in the author's opinion, handling corruption is necessary for handling new strategies and techniques in making legal breakthroughs both materially and in criminal procedural law and other criminal rules [7]. Therefore, at least this argument makes Justice Collaborator necessary in completing the eradication of corruption through criminal justice practices. The main thing is to seek a conception of justice and find an ideal situation for justice because the essence of the goal of a just society is wholly a fundamental part of the theory of justice. Rawls proposes two principles of justice, namely:

1. The principle of equality, where all the benefits of society are divided equally among members of the same society. Agreed equity includes equity in liberties, growth opportunities, and equity in income and wealth.
2. The principle of inequality states that inequality situations should be governed so that it benefits the weakest groups of society the most.

In his *Nicomachean Ethics*, Aristotle states that justice is a virtue related to human relations. A person is unfair if that person takes more than the fair share. People who ignore the law are also unfair because all things based on the law can be considered fair. Justice is assessed by giving to anyone according to their right, namely by acting proportionally and not violating the law [8].

Here the author observes that the opinion above is present because some legal subjects do not see the existence of the Justice Collaborator comprehensively and do not see the Justice Collaborator in terms of expediency and justice as one of the extraordinary steps in handling corruption. Perhaps without the presence of the Justice Collaborator, the KPK will be able to investigate corruption cases. However, it will likely take a long time, while the country's finances and stability cannot be placed in an uncertain condition. In addition, law enforcement officials will likely not find the end to this problem, so this case will be neglected and evaporate without a resolution.

The role of the Justice Collaborator is very significant in capturing the brains of larger perpetrators so that criminal acts can be completed and do not stop at the perpetrators who play a minimal role in corruption. The witness of the perpetrator who cooperates is willing to provide significant, relevant, and reliable information to reveal a criminal act, not the main perpetrator, and is willing to return the assets he has obtained [9].

As for the role of the state justice collaborator and law enforcement, it is necessary to pay attention to legal protection for justice collaborators because the perpetrator's witness also helps the state's tasks in eradicating corruption. Unfortunately, however, the government and the competent authorities have not given maximum respect and protection to Justice Collaborators in Indonesia. As a result, many Justice Collaborators also received the same sentence as other suspects. Moreover, it means that law enforcers do not consider their role in uncovering crimes more broadly, deeper, and faster, especially the regulations that govern them.

Not all Justice Collaborators should be punished even though the legal sanctions are still applied. For example, suppose the Justice Collaborator and his role is not significantly directly related to the subject of the victim. In that case, they need to be treated differently, but this does not necessarily erase the crimes committed by the Justice collaborator so that the Justice collaborator will still be punished. Not all Justice Collaborators should be punished even though the legal sanctions are still applied. For example, suppose the Justice Collaborator and his role is not significantly directly related to the subject of the victim. In that case, they need to be treated differently, but this does not necessarily erase the crimes committed by the Justice collaborator so that the Justice collaborator will still be punished.

Based on the description above, the writer is interested in reviewing how the ideal form of implementing the role of justice collaborator is in practice in handling corruption crimes. Justice collaborator is a strategic issue that incidentally has new dimensions in Indonesia's repertoire of criminal law corruption [10]. Therefore, ideally, the implementation of the role of justice collaborator will certainly depend on the following things, namely:

Table 1 Implementation of justice collaborator

No.	Implementation of Justice Collaborator	Information
1.	Legal Protection Against Justice Collaborators	The importance of the role of justice collaborator in disclosing criminal acts of corruption in Indonesia requires a model of legal protection for the right justice collaborator for the Effectiveness of the Implementation of Justice Collaborator
2.	Strengthening the Law of Justice Collaborator in Legislation	Considering that the Justice Collaborator arrangement in Indonesia is still experiencing a vacuum or vacuum of law that, in reality, does not stipulate provisions regarding justice collaborators. Therefore, it is highly recommended that the Legislative Institution prioritize realizing the implementation of special legal regulations governing justice collaborators as an important legal interest.
3.	Guaranteed Rewards for Justice Collaborators in Corruption Crime Cases	The reward arrangement in Law Number 13 of 2006, in conjunction with Law Number 31 of 2014, has no binding power for judges to follow it. However, SEMA Number 4 of 2011 still uses SEMA as guidelines when finding cases involving a Justice Collaborator.

The regulation regarding justice collaborators should be included in the revision of the Criminal Procedure Code because the Criminal Procedure Code is a formal criminal law instrument that determines the procedural examination of cases in the criminal justice system in Indonesia. Because LPSK is not included in the criminal justice system, it triggers the recommendations issued by law enforcement agencies to receive less consideration because they have two choices. Namely, they may or may not be considered.

Legal protection arrangements for justice collaborators need to be included in the revision of the Criminal Procedure Code. That is because many institutions are authorized to receive and handle reports from a justice collaborator. Therefore, it is necessary to affirm each institution's authority, functions, and duties in the procedures for handling and providing protection for justice collaborators through the revision of the Criminal Procedure Code.

Suppose these provisions are included in the

revision of the Criminal Procedure Code. They can become guidelines and foundations for law enforcers in protecting justice collaborators, considering the Criminal Procedure Code is a formal guideline that is binding and imperative for law enforcement agencies. Another reason is that witnesses in the judicial process are important factors in every stage of the criminal justice process. Moreover, this understanding of the witness shows how important testimony is in the criminal justice process so that a criminal act is revealed. Thus, it can be concluded that a witness is someone who provides information in the criminal justice process to find a bright spot whether a criminal act has occurred as he has heard, seen, or experienced it himself.

Eradication of criminal [10] acts of corruption requires legal breakthroughs to reduce and accelerate the eradication of criminal acts of corruption. Therefore, in addition to the mechanism of criminal penalties as a deterrent effect, it is also necessary to realize other repressive strategies, such as acting as actors in corruption. These actors can be witnesses who want to cooperate in eradicating larger criminal acts of corruption, namely those who are often referred to as justice collaborators [11].

However, the current positive law applying in Indonesia has not been able to encourage the public to participate massively as witnesses to the perpetrator. That is because such a witness does not get the same special treatment as the crime reporter as regulated in Article 10 paragraphs (1) and (2) Law No. 13 of 2006 concerning the Protection of Witnesses and Victims (from now on named as the PSK Law). A witness who is also a suspect in the same case cannot be acquitted of a criminal charge if proven legally and convincingly guilty. However, his testimony can be taken into consideration by the judge in mitigating the sentence.

The importance of the role of justice collaborators in disclosing criminal acts of corruption in Indonesia requires an appropriate model of legal protection for justice collaborators in order to create legal protection for justice collaborators [12-13]. According to Lilik Mulyadi, the persuasive model is a comprehensive model for protecting justice collaborators that involve components of the Criminal Justice System, namely the Police, Attorney General's Office, Courts and Correctional Institutions. and the KPK for corruption cases [2]. In the author's opinion, the persuasive model needs to be combined with a comprehensive model to protect justice collaborators. With this comprehensive model, all components in the criminal justice system will coordinate with each other. For example, if a justice collaborator has given his/her information to one institution, it is hoped that all other components involved in the corruption criminal justice system will provide protection; comprehensive protection will be realized.

The juridical basis of the comprehensive and

persuasive protection model can be observed through Article 10A of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Accordingly, perpetrator witnesses can receive special treatment in the examination process and awards for their testimony [14]. As referred to in paragraph (1), the special handling is in the form of: a. separation of the place of detention or serving a sentence between the Perpetrator's Witness and the suspect, Defendant, or convict whose crime has been revealed; b. separation of the files between the documents of the Perpetrator's Witness and the files of suspects and defendants in the investigation and prosecution of the crimes they have disclosed; or c. testify before the trial without dealing directly with the Defendant whose crime was revealed [12].

From the above provisions, at least there is an affirmation that every law enforcer in every inspection process, from the investigation stage carried out by investigators to the judge's decision, is obliged to protect justice collaborators. In addition, however, Article 10 paragraph (1) of Law Number 31 of 2014 with Amendments to Law Number 13 of 2006 about Protection of Witnesses and Victims states that Witnesses, Victims, Perpetrators' Witnesses, or Reporting Parties cannot be prosecuted by criminal and civil law for the reported testimony (future, current or past) unless the testimony or report is not given in good faith [15]. This provision guarantees protection against counterclaims submitted by parties who feel aggrieved by the testimony given by the justice collaborator. So the justice collaborator should no longer have to worry about any counterclaims against him [12].

Currently, there is no statutory regulation that explicitly regulates the inter-institutional understanding of the protection that will be given to justice collaborators. However, the presence of justice collaborators in disclosing corruption is very much needed by law enforcement. Justice collaborators can report to LPSK, the police, the prosecutor's office, and the KPK about what he knows about corruption cases involving him [2].

Suppose, in the future, this comprehensive protection model is applied, which focuses on the involvement of all components of the institution in the criminal justice system to provide comprehensive protection for justice collaborators. In that case, law enforcement officers will be coordinated with each other.

#### 4. Conclusion

The ideal form of implementation of the role of justice collaborators depends largely on how far the commitment of the apparatus in providing legal protection to them, how firm the willingness of law enforcement agencies and rule-makers to prepare a clear and the complete rule of law regarding justice

collaborators, and how firm the commitment of law enforcement officials in ensuring the provision of rewards for them for their disclosure of corruption cases.

Protection for justice collaborators with various models needs to be considered to increase the participation of many parties in reporting cases they know. Justice collaborators need to be awarded for each participant in disclosing corruption cases. In addition, a clear article is needed in the Corruption Criminal Case about the reward for them.

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## References

- [1] REKSODIPUTRO M. *Sistem Peradilan Pidana Indonesia (Melihat Kepada Kejahatan Dan Penegakan Hukum Dalam Batas – Batas Toleransi)*. Fakultas Hukum Universitas Indonesia, Jakarta, 1993.
- [2] MULYADI L. *Perlindungan Hukum terhadap Whistleblower dan Justice Collaborator dalam upaya penanggulangan organized crime*. PT Alumni, Bandung, 2015.
- [3] DARMAWATI D. Aspek Hukum Pemenuhan Hak Atas Pembebasan Bersyarat Bagi Narapidana Korupsi. *Jurnal Restorative Justice*, 2019, 3(2): 108–118. <https://doi.org/10.35724/jrj.v3i2.2215>
- [4] PRESIDEN REPUBLIK INDONESIA. *Undang-Undang Nomor 31 tahun 1999, Pemberantasan Tindak Pidana Korupsi juga memuat ketentuan mengenai perlindungan terhadap justice collaborator*, 1999. <https://jdih.bumn.go.id/unduh/UU%20Nomor%2031%20Tahun%201999.pdf>
- [5] FARIDA F. J. *Korupsi Kekuasaan Dilema Penegakan Hukum di Atas Hegemoni Oligarki*. PT Rajagrafindo Persada, Depok, 2016.
- [6] YAHYA H. *Pembahasan, Permasalahan dan Penerapan KUHAP, Penyidikan dan Penuntutan Edisi 2*. Sinar Grafika, Jakarta, 2012.
- [7] EDI S. *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum di Indonesia*. Prenadamedia Group, Jakarta, 2017.
- [8] SHIDARTA D. D. *Pokok-pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*. Gramedia Pustaka Utama, Jakarta, 1999.
- [9] FIRMAN W. *Whistleblower dan Justice Collaborator dalam Perspektif Hukum, Wedatama Widya Sastra*. Wedatama Widya Sastra, Jakarta, 2012.
- [10] SAID KARIM K. H. M., & HAIRANAH H. *Delik-Delik di dalam Kodifikasi*. Pustaka Pena Press, Makassar, 2008. <https://123dok.com/document/q5p6dgry-delik-delik-di-dalam-kodifikasi.html>
- [11] MANALU R. Y. Justice Collaborator Dalam Tindak Pidana Korupsi. *Lex Crimen*, 2015, IV(1): 152-163. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/7011/6516>
- [12] HERYANI W., RATNAWATI, ANAS A. M. A., and WAHYUNI A. S. A Legal System Approach in the Handling

of Narcotic Crimes by Children. *Awang Long Law Review*, 2020, 3(1): 35–43. <https://ejournal.stih-awanglong.ac.id/index.php/awl/article/view/101>

[13] FAHMY A. Y. Pelaksanaan Program Kemitraan Pemerintah dan Masyarakat dalam Penataan Lingkungan Permukiman Berbasis Komunitas (Studi Pada Dinas Cipta Karya Tata Ruang dan Desa Sengguruh Kecamatan Kepanjen, Kabupaten Malang. *Jurusan Administrasi Publik*, 2013, 1(6): 1086–1095. <http://administrasipublik.studentjournal.ub.ac.id/index.php/jap/article/view/176>

[14] KOMARIAH M. Perlindungan Hukum Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban. *Galuh Justice*, 2015, 13: 229–245. <https://jurnal.unigal.ac.id/index.php/galuhjustisi/article/view/421/365>

[15] SULEMAN H. N. Perlindungan saksi dan korban. *Jurnal Ilmiah Al-syir'ah*, 2009, 7(1): 1–7. <http://dx.doi.org/10.30984/as.v7i1.64>

## 参考文献:

- [1] REKSODIPUTRO M. 印度尼西亚刑事司法系统 (在容忍限度内审视犯罪和执法)。印度尼西亚大学法学院, 雅加达, 1993.
- [2] MULYADI L. 为打击有组织犯罪而为举报人和司法合作者提供法律保护。万隆校友有限责任公司, 2015.
- [3] DARMAWATI D. 履行腐败罪犯有条件释放权的法律问题。恢复性司法杂志, 2019, 3(2): 108–118. <https://doi.org/10.35724/jrj.v3i2.2215>
- [4] 印度尼西亚共和国总统. 1999年第31号法律, 根除腐败犯罪行为也包含有关保护司法合作者的规定, 1999. <https://jdih.bumn.go.id/unduh/UU%20Nomor%2031%20Tahun%201999.pdf>
- [5] FARIDA F. J. 霸权寡头之上执法的腐败权力困境。拉贾格拉芬多·佩尔萨达有限责任公司, 德波, 2016.
- [6] YAHYA H. 刑事诉讼法典的讨论、问题和应用, 调查和起诉版2. 辛纳图形, 雅加达, 2012.
- [7] EDI S. 印度尼西亚的综合刑事司法系统和执法系统。媒体预览集团, 雅加达, 2017.
- [8] SHIDARTA D. D. 法律哲学原则, 印度尼西亚法律哲学的内容和方式。语法主席, 雅加达, 1999.
- [9] FIRMAN W. 威达玛维迪亚文学是法律视角的举报人和司法合作者。威达玛维迪亚文学, 雅加达, 2012.
- [10] SAID KARIM K. H. M., 和 HAIRANAH H.

- 编纂犯罪。笔新闻图书馆，望加锡，2008。  
<https://123dok.com/document/q5p6dgry-delik-delik-di-dalam-kodifikasi.html>
- [11] MANALU R. Y. 腐败犯罪的司法合作者。莱克斯犯罪, 2015, IV(1): 152-163.  
<https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/7011/6516>
- [12] HERYANI W., RATNAWATI, ANAS A. M. A., 和 WAHYUNI A. S. 处理儿童毒品犯罪的法律制度方法。阿旺隆法律评论, 2020, 3(1): 35-43. <https://ejournal.stih-awanglong.ac.id/index.php/awl/article/view/101>
- [13] FAHMY A. Y. 在以社区为基础的聚居环境中实施政府和社区伙伴关系计划 (在玛琅摄政区克潘仁区的空间规划和僧格鲁村研究。公共行政部, 2013, 1(6): 1086-1095.  
<http://administrasipublik.studentjournal.ub.ac.id/index.php/ja/article/view/176>
- [14] KOMARIAH M. 证人和受害人保护局对证人和受害人的法律保护。加卢正义, 2015, 13: 229-245.  
<https://jurnal.unigal.ac.id/index.php/galuhjustisi/article/view/421/365>
- [15] SULEMAN H. N. 证人和受害者保护。希拉科学杂志, 2009, 7(1): 1-7.  
<http://dx.doi.org/10.30984/as.v7i1.64>