

# Reconstruction of Legal Protection of Justice Collaborators in Narcotic Criminal Cases

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**Abstract.** Justice Collaborator aims to facilitate evidence and prosecution as well as fully reveal a crime, especially those related to organized crime. However, not everyone who commits a crime as a perpetrator wants to become a justice collaborator for various reasons, including a lack of legal protection. The formulation of the problem is 1. What is the legal protection for justice collaborators in narcotics crimes so far? 2. What is the ideal concept of legal protection for justice collaborators in the criminal justice process, especially narcotics, in the future? This research uses a type of normative research with statutory, comparative and conceptual approaches. The research results show that in Indonesia, only a few perpetrators of narcotics crimes are willing to become justice collaborators, one of the reasons is the lack of legal protection. The ideal concept of legal protection for justice collaborators in the criminal justice process, especially narcotics, in the future is carried out by reconstructing regulations regarding justice collaborators. Reconstruction can be carried out using two alternatives, namely: reconstructing the Witness and Victim Protection Law, or creating separate regulations regarding justice collaborators in the form of a law. Keywords: Reconstruction, legal protection, justice collaborator, narcotics crime

## 1 Introduction

The role of justice collaborators is currently receiving serious attention because of their key role in "uncovering" the dark veil of certain crimes that are difficult for law enforcement to uncover. Justice collaborators are witnesses to a crime's perpetrators willing to help or cooperate with law enforcement.

Justice collaborators were first introduced in the United States around the 1970s. The doctrine in the United States as one of the legal norms in that country is due to the mafia's behavior which always keeps its mouth shut or known as the Omerta oath of silence. Therefore, justice collaborator facilities are given legal protection for the mafia who want to provide information. Then the terminology of justice collaborators developed in the following years in several countries, such as Italy (1979), Portugal (1980), Spain (1981), France (1986), and Germany (1989) [1].

In Indonesia, justice collaborators have not yet been regulated in the Criminal Procedure Code. Still, since the enactment of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, amended and added to Law Number 31 of 2014, it has regulated

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witnesses who cooperate (Justice collaborators). In this law, justice collaborators are limited to Victims of gross human rights violations, Victims of criminal acts of terrorism, Victims of criminal acts of human trafficking, Victims of criminal acts of torture, Victims of criminal acts of sexual violence, and Victims of serious abuse.

Recently, the role of justice collaborators has become frequently discussed after Bharada E became a witness to the perpetrators who collaborated in the Ferdy Sambo case. Not everyone, even though they are perpetrators, wants to become a justice collaborator for different reasons, but one of them is the guarantee of legal protection.

The Witness and Victim Protection Agency (LPSK) admits that one way to uncover narcotics crimes is to use the Justice Collaborator mechanism because they can access the narcotics network [2]. Narcotics is a multidimensional and complex problem related to legal, state security, health, economic and social issues. Narcotics crime is organized, transnational, and part of a proxy war that can destroy the nation's ideology and national security. The association between drugs and crime is one of the central concerns of contemporary British drugs research and policy. Another major concern in recent years has been the clustering together of the most serious problems of drugs and crime in neighbourhoods already experiencing multiple social and economic difficulties [3].

Around 275 million people used drugs worldwide in 2020, with 36 million having a drug use disorder (UNODC World Drug Report Press Release 2021, June 24, 2021). UNODC 2022 also released a global phenomenon in which more than 1,127 types of new substances were reported (UNODC, May 2022). Meanwhile, in Indonesia, based on data from the BNN Laboratory Center, up to now, 91 New Psychoactive Substances (NPS) have been successfully detected, of which 81 NPS have been included in the Permenkes, and 10 NPS have not been regulated in Permenkes No. 9 of 2022 concerning changes to the classification of Narcotics [4].

The difficulty of uncovering a network of crimes in narcotics crimes must have witnesses, so there must be cooperation between the perpetrators and law enforcement officials so that the main actors can be held accountable for their crimes. It is not easy for perpetrators of narcotics crimes to cooperate with law enforcement officials if the legal protection provided is inadequate.

## **2 Problem Formulation**

1. How is the legal protection for justice collaborators in narcotics crimes so far?
2. What is the ideal concept of legal protection for justice collaborators in the criminal justice process, especially narcotics, in the future?

## **3 Research Method**

This research is normative or doctrinal legal research due to the topic and rules of law [5]. The object of study in this study focuses on the law in the books. So it is oriented towards legislation, both the current and other countries laws. Several approaches were used to answer this study's problems: the statute, case, comparative, and conceptual approaches [6]. The data used was secondary data consisting of primary, secondary and tertiary legal materials. The research was conducted in the Special Region with the institutions where secondary data was collected: the Yogyakarta District Court, the Sleman District Court, the Yogyakarta Regional Police, the Yogyakarta Police and the DIY Province National Narcotics Agency. In more detail, the library and field research data were processed, analyzed critically, and presented qualitatively. The data obtained were analyzed descriptively and qualitatively.

## **4 Literature Review**

### **4.1 Definition of Justice Collaborator**

The definition of a justice collaborator is often confused with a whistleblower, even though it has a different meaning. According to the Supreme Court Circular Letter (SEMA) Number 4 of 2011, whistleblowers are parties who know and report certain criminal acts and are not part of the perpetrators of the crimes they report. Whereas the perpetrator who cooperates (justice collaborator) is one of the perpetrators of certain crimes, admits that what he did, is not the main actor in the crime and provides information as a witness in the judicial process. If specified, the requirements to be called a justice collaborator are: 1). The perpetrators of certain crimes 2). Admitting the crime committed 3). Not the main actor 4). Willing to be a witness in the trial process 5). The public prosecutor in his charge stated that those involved provided significant information and evidence

Law Number 31 of 2014 amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims also regulates Justice Collaborators in Article 1 Number 2: Perpetrator witnesses are suspects, defendants or convicts who cooperate with law enforcement to uncover a crime in the same case.

A justice collaborator is a witness who is also a perpetrator of a crime who is willing to help law enforcement officials to uncover a crime or the impending occurrence of a crime to return assets or proceeds of a crime to the state by providing information to law enforcement officials and testify in court proceedings [7].

### **4.2 Drug-Related Crimes**

Drug abuse is increasing along with smuggling, trafficking and illicit trade abuse and is followed up with arrests and detention of perpetrators and narcotics dealers. Both government and non-government institutions must do a series of continuous actions from various elements. The series of actions include preventive, repressive and rehabilitative efforts [8]. Current narcotic control regulations lie in Law Number 35 of 2009, while Law Number 35 of 2009 Articles 111-148 discusses the types of drug-related crimes.

Several factors influence drug abuse: first, the self factor, great curiosity to try without considering the consequences; second, social-environmental factors, or the impact of the actor's social environment, such as the environment where the actor lives and the actor's friendship at school. At first, curiosity motivates thinking, and then the opportunity to do so depends on the infrastructure. Third, the personality factor is self-confidence, but unstable emotions and mental weakness [9].

### **4.3 Reconstruction**

“Reconstruction or restructuring implies rearrangement. With rearranging the building of the Indonesian criminal law system, the term restructuring or reconstruction means rebuilding the national criminal law system. So the two terms are closely related to the issues of “law reform” and “law development”, especially about “renewal/development” of the criminal law system or often abbreviated as penal reform[10]. Hence, reconstruction is the act or process of rebuilding, recreating, or reorganizing something (an expert in accidental reconstruction) [11].

## 5 Result and Discussion

### 5.1 Legal Protection for Justice Collaborators in Narcotics Crime So far

The abuse of narcotics is currently experiencing rapid development, where narcotics are no longer used as a medicinal purpose or scientific development goal, but are diverted to obtain huge profits, namely by illegally trafficking narcotics to various countries [12]. The 2021 Drug Abuse Prevalence Survey conducted by the National Narcotics Agency (BNN) and the Society and Culture Research Center of the National Research and Innovation Agency (BRIN) showed that during 2019-2021, the prevalence rate of drug abuse per year increased by 0.15% from 1.80% in 2019 to 1.95% in 2021. This increase is quite large when viewed from the absolute number of the population. Drug abuse was estimated at 3,662,646 people aged 15-64 years over the past year, 243,458 more compared to 2019 (3,419,188 people). Meanwhile, the prevalence rate of drug abuse increased by 0.17% from 2.4% in 2019 to 2.57%. In 2021, 4,827,616 people aged 15-64 have used drugs. This number is 292,872 more people than in 2019 (4,534,744 people). The increase in the prevalence rate also reflects an increase in drug trafficking in society which has caused the number of drug users to increase in only two years [13]. The DIY Provincial National Narcotics Agency reported 5 (five) provinces in Indonesia with the highest category prevalence of drug use in 2019.

Table 1 Provinces with the Highest Drug Use in 2019 [14]

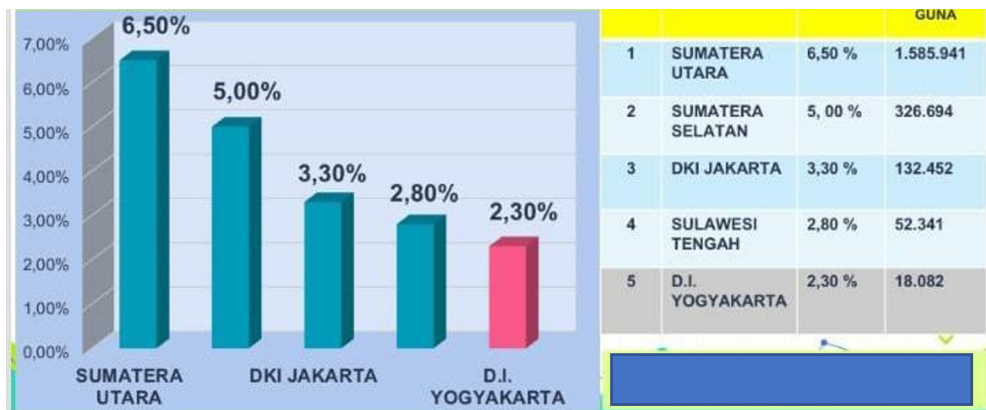


Table 1 shows that North Sumatra Province is ranked first among the five provinces with the highest prevalence of drug abuse in Indonesia. The entry of DIY into the top five surprised BNN of DIY because the province, based on the 2020 Population Census [15] had a population of 3.67 million consisting of 1.82 million males and 1.85 million females.

To eradicate the abuse and illicit traffic of narcotics in DIY during 2022, the BNNP and BNNK in the DIY region have succeeded in uncovering 30 methamphetamine cases of 138.75 grams, cannabis cases of 1129.04 grams, cannabis trees cases of 13 tree trunks, cannabis seeds cases of 63.66 grams and synthetic tobacco cases of 35.95 grams. As for the suspects in the narcotics cases successfully secured by BNNP and BNNK in the DIY area in 2022, there were 37 perpetrators, 36 already undergoing legal proceedings (investigation) and one-person diversion [16].

Table 2 Prevalence of drug abuse in DIY [17]

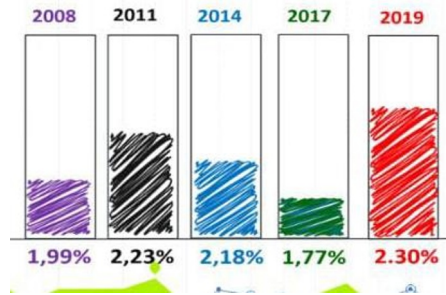


Table 2 shows that In 2019, based on the figure above, there was a high increase compared to the previous year. There is no explanation of the factors causing the increase, but if analyzed, they include the outbreak of COVID-19.

Based on the research, not many perpetrators of narcotics crimes wanted to become justice collaborators. Even in Yogyakarta, there had never been a justice collaborator for narcotics cases. On April 10, 2023, Dayu Purnama, researching at the National Narcotics Agency in the Province of DIY, reported that narcotics cases were complicated. Sometimes the perpetrators did not meet/know each other. The lack of legal protection was one of the reasons someone did not want to become a justice collaborator.

An offender can be a Justice Collaborator when he has significant testimony and evidence to capture an offense of criminal act, not the main actor, revealing the offenders who have a larger role and are willing to return the asset from the action. The Witness and victim protection Legislation year of 2014 provides space for law enforcement officials to give Justice Collaborator's status during the investigation process [18].

Even though it is already set in the legislation as well as a number of internal rules and joint regulations, however the indictment status and rights of Justice Collaborator (JC) are still often neglected, JC has not been fully utilized. It can be seen from the judicial proceedings, i.e; 1. He informs/testifies, he also getting involved, then he can be charged as a field actor/perpetrator; 2. Do not admit that the disclosure of a case due to the contribution of JC; 3. Law enforcement officer still consider/assume, without the status of JC, a suspect can also testify as a crown witness; 4. Status of JC is misused to protect some particular interests or to gain certain advantages; 5. Acquire the stigma, while JC should be an opportunity for the suspect/defendant to make redemption. Their courage to unveil crime and bear witness the truth can be a way to gain forgiveness from The Almighty God; 6. There are technical problems related to the authorized institutions that determine the status of JC and the need for a certitude mechanism to get and provide JC ; 7. The punishment for those who granted as JC is also has no definitive standards/procedure, as if there is no legal assurance [19].

There is three jurisprudence that the author obtained related to Justice Collaborator against drug-related crimes: Supreme Court Decision Number 920K/Pid.Sus/2013, Pematang Siantar District Court Decision Number 231/Pid.Sus/2015/PN.Pms, Pekanbaru District Court Decision Number 683/ Pid. Sus/2016/PN. Pbr. From this jurisprudence, the Defendant's status has been determined as a Justice Collaborator so that the judge, in his legal considerations, pays attention to fulfilling the rights of a Justice Collaborator following the applicable laws and regulations. Justice Collaborator can also be seen in granting remissions to convicts of narcotics cases in several correctional institutions [20].

One of the cases that will be analyzed is the decision of the Pematang Siantar District Court. Pematang Siantar District Court Decision No. 231/Pid.Sus/2015/PN Pms

231/Pid.Sus/2015/PN Pms sentenced the defendant Atan Makmur aka Ong, to 8 (eight) years with methamphetamine of 108.39 (one hundred eight points thirty-nine) grams. The judge's consideration of dropping far below the demands of the public prosecutor is because the convicted person is considered a justice collaborator. The Pematang Siantar District Court judge considered the justice collaborator as a witness to the perpetrators who uncovered the main perpetrators of drug dealers and networks involved in narcotics trafficking in the Pematang Siantar and Simalungun areas.

Regarding justice collaborators, Law Number 31 of 2014 amendments to Law Number 13 of 2006 have concerned the Protection of Witnesses and Victims. It is also regulated in the Supreme Court Circular Letter No. 04 of 2011 concerning the Treatment of Whistleblowers and Witness Collaborators in Certain Criminal Cases. However, these regulations only adjust the conditions for becoming a Justice Collaborator and have not protected in terms of leniency.

The Supreme Court Circular Letter No. 04 of 2011 in Number 9 determines a person as a witness for a Collaborating Actor (Justice Collaborator) as follows: a. The person concerned is one of the perpetrators of certain criminal acts as referred to in this SEMA, b. admit the crime he committed, c. not the main perpetrator, d. provide testimony as a witness in the judicial process; The Law on the Protection of Witnesses and Victims already regulates the rights of witnesses in the judicial process.

## **5.2 The Ideal Concept of Legal Protection for Justice Collaborators in Criminal Justice Processes Including Drug-Related Crimes**

Existing regulations have not changed to ensure future sustainability. There is no argument, according to Ali (2005), about which factor is the pioneer of change when it comes to the concept of legal change. There is little doubt that other factors have simply followed the law or that other components of the new law will cause change. However, the law can have a role (as first, second, or inconsequential) in bringing about change. Furthermore, Ali asserted that the law is merely a tool that indirectly influences change (Ali, 2005) [21].

Based on the analysis in sub A above, it is necessary to compare it with several regulations regarding justice collaborators in other countries to develop a future concept.

### **5.2.1 Justice Collaborator in the Netherlands**

Justice collaborators in the Netherlands use the Witness Agreements mechanism, an agreement between the public prosecutor and witnesses to provide testimony with a reward. In Dutch criminal law, there is a sharp difference between the physical protection of witnesses on the one hand and, on the other hand, the instrument for making agreements with witnesses to give testimony in exchange for rewards. The provisions of this witness are contained in the Dutch Criminal Procedure Code Title III, section 4B-4D (Article 226 G-226 L PKC) [22]. J.H.Crijns further stated that in the witness agreement, rewards that can be given to witnesses could not be greater than 50% relief from the sentence. It is impossible to grant waivers beyond the limit that would result in total freedom [23]. The importance of information, evidence and testimony provided by witnesses who work together is a major factor in granting status as a justice collaborator. In the Netherlands, making witnesses of perpetrators as justice collaborators are known as subsidiarity, in which the granting of status as a justice collaborator can only be made as a substitute if other methods of uncovering crimes have failed or it is certain that they will not produce results to uncover crimes [24].

### **5.2.2 Justice Collaborator in the Germany**

Witness protection issues in Germany are regulated by two laws: the German Criminal Procedure Code (Strafprozessordnung/StPO), which in 1998 made notable changes to the issue of witness protection through the Law on Witness Protection in the Process of Criminal Examination and Protection of Victims (Zeugenschutzgesetz/ZschG). This law emphasizes Rights in the examination process. However, this ZschG does not specifically accommodate the rights of witnesses, such as the Rights of Witnesses in Ancarnan, often key witnesses in Serious Crimes. There are several kinds of witnesses: witnesses, undercover witnesses, witness victims, witnesses by chance and witnesses as perpetrators [25]. No special institution or commission is authorized to handle witness protection in Germany.

### **5.2.2 Justice Collaborator in the United States**

In the 1970s, the United States attempted to expose organized crime by the Italian mafia. However, in the Italian mafia, there is a code of silence or what is known as Omerta. In the beginning, the United States government recognized the practice of protecting witnesses who cooperated (justice collaborators) and who tried and had good faith in eradicating and dismantling a crime in a crime that involved many people and was organized [26].

To justice collaborators in drug-rated cases where the perpetrator has dared to help law enforcement with risks that are not small, ideally, get a reward. Of course, this reward differs according to their respective roles and depends on the crime type committed. Isti Latifah Astri formulated rewards for Justice Collaborators as follows [27]

- a) For groups of narcotics addicts who submit applications as Justice Collaborators, they can be given leniency in rehabilitation and reduced criminal sentences, at least according to the Article against which they were charged and prosecuted;
- b) For groups of drug abusers who submit applications as Justice Collaborators, criminal imposition may be given in the form of a reduction of one-third of the sentence from the Article against which they were charged and prosecuted;
- c) For the group of narcotics producers or kingpins do not receive criminal punishment because they are the main perpetrators.

So far, justice collaborators have not been comprehensively regulated. Supreme Court Circular Letter Number 4 of 2011 only generally regulates the requirements to become a justice collaborator and, even then, only for certain cases such as terrorism, narcotics, corruption, money laundering and other organized criminal acts. If analyzed with the theory of legal certainty put forward by Gutav Radbrugh, it is necessary to make special references regarding this justice collaborator. This setting can be done in several ways, including:

- 1) Reforming the Witness and Victim Protection Act so that the provisions related to the protection of witnesses, especially witness witnesses, immediately know what reward they will get. As per regulations in the Netherlands, get a 50% reduction in sentences from the sentence that should be.
- 2) Making different regulations regarding justice collaborators in the laws. This process takes a long time, but this is an ideal way to do it for legal certainty and benefits.

Referring to the above concept, the expected protection, both in abstracto and concreto, is expected to materialize so that the cooperating actors will no longer hesitate to act as justice collaborators.

## **6. Conclusion**

From several court decisions and interviews with sources, it can be concluded that legal protection for justice collaborators in narcotics crimes has always existed but there are no definite rules. Some are subject to conditional sentences and others are subject to

imprisonment. To get leniency in the sentence, some have resorted to cassation, which takes a long time.

The ideal concept of legal protection for justice collaborators in the criminal justice process, especially narcotics, in the future is carried out by reformulating/reconstructing regulations regarding justice collaborators. Reconstruction can be carried out using two alternatives. First, reconstruction of the Witness and Victim Protection Law, so that the provisions relating to witness protection, especially witnesses of perpetrators, immediately know what rewards they will get. As is the case in other countries, the sentence is reduced by 50% of the proper sentence. Second, separate regulations regarding justice collaborators in the form of laws can be made. This does require quite a bit of time, but for the sake of legal certainty and benefits, this is the most ideal route to take.

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