

# DISCLOSE CRIMINAL INFORMATION: REWARD AND PUNISHMENT FOR WHISTLEBLOWERS AND JUSTICE COLLABORATORS

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## ABSTRACT

*Whistleblowers are persons that directly witness crimes and disclose the information to the public or law enforcement officials. However, in some cases, they decide to remain silent because the existing legal system does not provide adequate protection. There might be possible risks or harms for persons who disclose criminal cases for public authority. This must be followed by an adequate legal protection. The law also provides legal safeguard for them who give false testimony on certain persons or cases. This paper was conducted to examine legal provisions on reward and punishment for whistleblower and justice collaborator in Indonesia and propose the better adequate protection. This study is normative legal research using statute and conceptual approach, while data is analyzed qualitatively. The research finding revealed that existing legal norms for whistleblowers and justice collaborators are still inadequate due to its inability to motivate a person to report criminal cases to law enforcement officials. Therefore, they should get balanced treatment both in rewards and punishment to stir the cases and to prevent falsified testimony before a court that causes adverse impact to others' rights.*

**Keywords:** Reward, Punishment, Whistleblower, Justice Collaborator, Criminal Justice System.

## INTRODUCTION

Whistleblowers are persons that directly witness crimes and disclose the information to the public or law enforcement officials. However, in some cases, they decide to remain silent because the existing legal system does not provide adequate protection. Therefore, in most cases whistleblowers prefer to confine in their family or friends, with the hope that they are going to pass the information to the law enforcement officials, for immediate investigation (Lee, 2015; Depoorter & Mot, 2006).

In situations where the witness decides to summon the courage and report to the appropriate authorities, all possible future risk needs to be adequately analyzed (Halverson, 2017; Gunasekara, 2005). Generally, whistleblowers are prone to victimization, threats, and revenge by perpetrators, which sometimes leads to death or dismissal from jobs (Deloy, 2016; Feldman & Lobel, 2007; Kututwa, 2007). These common threats are some of the common reasons people feel reluctant to report crimes (Epstein, 2005). Therefore, to discover organized

or white-collar crimes involving many people, the criminal justice system needs to be able to provide legal protection in the form of rewards to whistleblowers (Eldar, 2010; Keith et al., 2016). Generally, when crime witnesses are rewarded and protected, they are encouraged to provide testimonies on certain cases (Katzis, 2017). Also, the criminal justice system needs to respect human rights, without mandating someone to reveal a criminal case in accordance with their knowledge on the subject matter. This study examines the reward and punishment in Indonesia criminal justice system associated with whistleblowers. According to this research, whistleblowers are different from justice collaborators that are willing to report themselves to law enforcement officials due to their involvement in a crime.

This study also discusses the existing legal norms on reward and punishment for whistleblowers and justice collaborators. The numerous witnesses associated with a crime make it difficult for a crime to be adequately reported to the right channels. Therefore, to scrub this weakness, the study proposes some strategies to help strengthen the legal protection of whistleblowers and justice collaborators, such as the provision of adequate rewards to enhance their passion for reporting a crime. In addition, adequate punishments need to be offered to those that provide false or hoax information or testimony.

## METHODOLOGY

This study used a normative legal research that particularly examined the legal norms rewards and punishments for whistleblowers and justice collaborators. Indonesia has enacted several regulations concerning the protection for them such as Joint Regulation of the Minister of Law and Human Rights, Attorney General, the Police, the Corruption Eradication Commission, and the Witness and Victim Protection Agencies Number 4 of 2011 concerning Protection for Reporting Parties, Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, Supreme Court Circular Number 4 of 2011 concerning Treatment for Whistleblowers and Justice Collaborators in Certain Criminal Cases, and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 on the protection of Witnesses and Victims.

These provisions put as primary source of this study using statute and conceptual approach (Ibrahim, 2006). To collect the data, this research used literature study assuming that the essential natures between whistleblower and justice collaborator by scholars need to be clearly distinguished because they are relevant for proposing the proper rewards and punishments for them. The data was analyzed qualitatively through data reduction, description, and inferring conclusion (Miles & Huberman, 2000)

### The Conceptual Framework of Whistleblower and Justice Collaborator

The terms whistleblower and justice collaborator are similar and inseparable in Indonesia's crime investigation units. Furthermore, their emergence is integrated into the Susno Duadji case, a former of the head of the Criminal Investigation Agency of Indonesian Police that dared to reveal the aberration of the work institution. The concept of whistleblower has been defined in various ways by experts. Miceli & Near (1992) defined it as "*The disclosure of the*

*illegal, immoral or illegitimate practices of former or current employers, to persons or organizations*” (Schmidt, 2005; Lewis & Trygstad, 2009). This definition is limited to a whistleblower that reveals illegal practices by the leaders of a company. According to Lorne Sossin (2005), the open disclosure or surreptitious leaking of confidential information concerning a harmful act committed by a colleague, is the act of whistleblowing.

The aforementioned definition is different from the definition proposed by Miceli & Near (1992), in which the scope of the whistleblower is limited to a person that reveals confidential information on actions that endanger others, committed by business partners. Gerald Vinten (1994) stated that it is the disclosure of confidential information carried out by a person against the action of a colleague, which is believed to be an unlawful act. This is usually contrary to rules and regulations of an organization, as well as a code of ethics such as corruption, abuse of power, or certain act that endanger public interest or workers’ health and safety.

According to article 1 number 2 of the Joint Regulation of the Minister of Law and Human Rights, Attorney General, Police, and Corruption Eradication Commission, Witness and Victim are protected. According to studies, a whistleblower is a person that sees, hears, experiences, and reports crime-related offenses to be investigated following the provision of the applicable legislation. Based on the above significances, a whistleblower is defined as a person that voluntarily and courageously reveals a crime. An important indicator is that they are not the culprit of the crime.

A justice collaborator, also known as witness, assists law enforcers in the form of reports, information, and testimonies, which tends to reveal criminal activities (Eddyono, 2011). The Committee of Ministers on April, 20th, 2005 at the 924th meeting of the Minister’s Deputies, defined witness protection as follows: Any person that faces criminal charges, or has been convicted of taking part in illegal association of any kind, or offenses of organized crime. However, criminal justice authorities tend to cooperate with witnesses to provide testimonies regarding an association or organization or any offense connected with organized crime.

According to the Joint Regulation of the Minister of Law and Human Rights, Attorney General, the Police, the Corruption Eradication Commission, and the Witness and Victim Protection Agencies Number 4 of 2011 concerning Protection for Reporting Parties, a justice collaborator is a witness, and perpetrator of a crime, that is willing to assist law enforcement officials.

Based on the above significances, there are two categories of justice collaborators. The first is associated with a witness that perpetrates the crime, which is in accordance with Articles 55 and 56 of the Criminal Code. This occurs in several possibilities, namely, a culprit participates in criminal activity with another person by their suggestion (Ali, 2017). Second, a witness as a perpetrator of the crime, that reveals and reports to the incident to law enforcement officials, with the zeal to provide testimony at trial. There is no similarity between offense committed by justice collaborator and reports to legal enforcement officials. The differences between a whistleblower and justice collaborator are shown in following Table 1 (Yunus, 2013):

<b>Table 1</b> <b>WHISTLEBLOWER VS. JUSTICE COLLABORATOR</b>	
<b>Whistleblower</b>	<b>Justice Collaborator</b>
A person that provides reports and information on a predetermined criminal activity.	A person willing to assist law enforcement officials to reveal a crime.
They are not part of the reported crime.	Perpetrators of the reported criminal offenses.

### **Legal Norms on Reward and Punishment for Whistleblowers and Justice Collaborators**

The provision regarding rewards and punishments has been recognized in national law, although it has not been comprehensively described in line with legal protection. Article 26 of Law Number 5 of 2009 concerning Ratification of the United Nations Convention against Transnational Organized Crime is explicitly regulated that each State Party need to take appropriate measures to encourage persons that participate in crime to supply useful information to competent authorities for investigation and evidentiary purposes such as identifying the nature, composition, structure, location or activities of organized criminal groups, international and local links, and offenses committed by these organized groups, as well as to provide factual, concrete help to competent authorities, and to contribute to the act of depriving organized criminal groups of their resources. Moreover, it regulates that each State Party needs to consider providing appropriate ways to mitigate the punishment of an accused person that provides substantial cooperation in the investigation or prosecution of an offense covered by this Convention, and to consider providing fundamental principles of its domestic law, to grant immunity to criminals that provide substantial information during the investigation process.

The article's formulation only regulates rewards for a justice collaborator in the form of action or effort to encourage incentives, including reducing penalties for a cooperative offender. In addition, punishment needs to be assigned to whistleblowers and justice collaborators that provide false testimony. In Law Number 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption, rewards are limited to a whistleblower, and not explicitly regulated for justice collaborators. Article 33 need to consider their national legal system, with the necessary measures undertaken to protect the unfair treatment of a person that reports in good faith and with reasonable reasons to the authorities of committed crimes.

The formulation of the above article shows that the phrase "*protection against unfair treatment*" is related to physical and psychological protection as well as the possibility of providing rewards. The fundamental weakness of this law is that punishment is not regulated. Therefore, the needs to be a balance on the protection/rewards and punishment for a whistleblower and justice collaborator that correctly and wrongly report a crime, respectively.

According to article 10 paragraph two Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, the provision regarding rewards is only for a justice collaborator in the form of criminal remission, which is facultative. This law only regulates the general framework of legal protection that needs to be given to a whistleblower, in the form of free or immunity from the third-party lawsuit, leaving out the rewards. Thereby, the above provision indicates that the contribution of a justice collaborator is only taken into consideration by judges in alleviating

their crime. However, this provision has no binding power that obliges a judge to provide criminal sanction remission, to a justice collaborator (Yunus, 2013).

According to point 9 letter C of the Supreme Court Circular Number 4 of 2011 concerning Treatment for Whistleblowers and Justice Collaborators in Certain Criminal Cases, there are two kinds of rewards, namely (1) probation penalties and (2) imprisonment which is the lightest among other defendants found guilty in certain cases. Unfortunately, the Supreme Court Circular does not regulate the rewards and punishments for both parties.

In the Joint Regulation of the Minister of Law and Human Rights of the According to article 6 paragraph a of Law Number 4 of 2011 concerning the protection of reporting parties, a justice collaborator is rewarded with remission of prosecution demands, including probation and milder criminal sentences. Meanwhile, the rewards for a whistleblower, this is not adequately regulated, although their legal protection in the form of free criminal, administrative and civil lawsuits, are provided.

According to Article 10 paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 on Protection of Witnesses and Victims, a whistleblower and justice collaborator “cannot be legally prosecuted, for their reported testimonies, unless they are not given in good faith”. The phrase “in good faith” indicates that they are incorrect or a hoax. Therefore, as long as a report or testimony is provided in good faith, they have impunity. Article 10 paragraph (2) also asserts the following: The lawsuits against Witnesses, Victims, Justice Collaborators and whistleblowers need to be postponed assuming the testimonies are has not been decided by the court and has permanent legal force. This tends to negate the existence of Article 10 paragraph (1) because the legal process is still overt as long as there are demands from third parties, despite providing reports or testimonies in good faith. The phrase “need to be postponed” indicates that they do not obtain legal immunity.

Article 28 of that Law asserted that a justice collaborator tends to obtain legal protection assuming they are able to meet the following conditions. Firstly the revealed criminal act in some instances needs to be in accordance with the decision of the Witness and Victim Protection Agency. Secondly, the importance of the information provided by the justice collaborator in revealing a criminal offense indicates the main culprit in the crime. Thirdly, willingness to return assets obtained from the crime committed and stated in a written statement. Fourthly, there needs to be actual, physical, or psychological threats against a justice collaborator, assuming the crime is based on the actual situation. These requirements contain weaknesses, which makes justice collaborator reluctant to report cases they are also involved.

A whistleblower that provides a report or testimony on crime does not obtain any reward; however, the reverse is the case with a justice collaborator. Article 10A paragraph (3) asserts that a justice collaborator has the right to receive rewards for the testimony given in the form of a) a remission of imprisonment after the Witness and Victim Protection Agency provides written recommendations to the public prosecutor to be included in their lawsuit to the judge or b) parole, and other rights of prisoners in accordance with applicable laws and regulations for a justice collaborator by the legal field. However, rewards are not provided without these recommendations.

Based on the above description, existing normative provisions regarding rewards and punishments for a whistleblower and justice collaborator are inadequate due to its inability to stir or motivate a person to report criminal cases. Therefore, their importance in investigating and

prosecuting a criminal case makes comprehensive rewards and punishments capable of mobilizing a person, for adequate regulation (Shaw, 2018; Ramirez, 2007).

## A Proposed Solution

Rewards and punishments regulation for a whistleblower and justice collaborator need to be formulated by referring to the conceptual distinction between these two terms. Assuming a whistleblower is a person that provides reports or testimonies regarding an alleged criminal act to law enforcement officials, and then a justice collaborator is a culprit that reveals a crime. The conceptual distinction, rewards, and punishments for both parties are different. For a whistleblower that dares to reveal a criminal case, inherent government agencies, particularly committed by their superiors, affect the importance of a wider community. The rewards need to be in the form of promotion (Sossin, 2005). For those that report embezzled taxes, either in the form of money or goods, needs to be in form of promotion to the director of a company to prevent fraudulent activities (Feldman & Lobel, 2007).

The reward options need to be explicitly stated in a court decision and supported by specific protection from possible threats, counter attack, or murder from the perpetrators or other parties interested in the case. This protection is for the whistleblower and family for a certain period. Besides, the government needs to ensure they are free from demotion, replacement, and other discriminatory actions through institutional policies (Burriss et al., 2009).

The type and amount of incentive and the form of specific protection provided depend on the type of crime, complexity of the reported case, involvement, potential threat, victimization, and possible murder conducted by the offender or other parties. However, assuming the report, statement, or testimony turns out to be untrue or manipulated, then a punishment needs to be imposed in the form of criminal prosecution, supervised community service at government or private institution for a certain period, demotion, delay in promotion, and dismissal.

Rewards for a justice collaborator are certainly different because they are involved in the crime. There are several forms of reward provided to a justice collaborator such as judicial pardon, criminal probation, the elimination of prosecution, and clemency. Theoretically, based on the theory of normative fault, a judge has the ability to state that a justice collaborator is guilty of a crime or at fault, without imposing criminal sentences. A fault is interpreted as “a performer of a criminal act, and they are blamed by society because it is a deliberate action” (Saleh, 1983). Meanwhile, the phrase “*can be blamed*” meanings, the doer is accounted or sentenced for the crime.

In the first significance, the meaning of fault deals with preventive function of criminal law that the criminal responsibility disappears, assuming the perpetrator has a reason for eliminating the fault. Fault is also related to the repressive function of the criminal law, showing that the criminal sanction does not have to be carried out by the judges. They only the ability to impose action, irrespective of the fact that the defendant is proven guilty of the crime. In addition, denunciation of conviction cannot be imposed, assuming the judges decide to forgive (Huda, 2006). However, the judge’s pardon is imposed, assuming a justice collaborator is willing and brave to reveal a crime while the case is being investigated in court. Although judicial pardon has not been regulated in Indonesian criminal law, this is theoretically justified.

Furthermore, a judge also has the ability to state that a justice collaborator has committed a criminal act with fault, without serving the sanction unless another is committed during the trial period. In addition, when a criminal case enters the prosecution stage, and the suspect is willing and brave to reveal their involvement, the prosecution is terminated and removed on condition that: 1). the person is willing to testify at the trial, and 2). a judge convicts another person on the basis of the disclosure of a case by the justice collaborator. The legal basis used by prosecutors in eliminating claims is the exclusion of cases in the public interest (Kaligis, 2011).

Clemency is the authority of the head of state to abolish all penalties that have been imposed by a judge or reduce a criminal sanction (Ali, 2017). This acts as a form of reward for a prisoner willing to reveal a crime. Clemency can be in the form of the following: 1). the abolition of the criminal sentence to ensure that the prisoner is released and expelled from the penitentiary, 2). reduction in the length of the sentence, such as from 15 to 5 years, and 3). substitution from heavier to lighter penalties, such as from the capital punishment to imprisonment for a certain period.

Besides the above rewards, punishment needs to be provided for a justice collaborator that provides falsified testimony at a trial, which causes adverse impact on others' rights. The type of punishment includes; imprisonment and fines with one-third additional penalties; replacement from a form of lighter main criminal sanctions to the heavier; supervised social work; termination of employment; and revocation of the right to nominate for public incumbency for a certain period. The system of material, formal, and executorial criminal laws that were currently implemented need to be reformed, assuming the rewards and punishments, for both a whistleblower and justice collaborator, is to be implemented. The forms of reward and punishment need to be automatically accompanied by changes in criminal legislation related to the conditions for a person to be classified as a whistleblower or justice collaborator in the form of legal protection, specific criminal procedure, conditions for imposing a and implementing a sentence.

## CONCLUSION

Not everyone that witnesses a crime is willing to report it to law enforcement officials. Therefore, to encourage such acts, rewards, and protection needs to be provided. A whistleblower or justice collaborator willing to report a criminal case or testify at a trial needs to be adequately rewarded. However, legal sanctions need to be given to those that provide false testimony. Unfortunately, the rewards stipulated in national law provisions are still partial and do not cover the desired needs of a whistleblower and justice collaborator. A whistleblower needs to be awarded career promotion in a job, incentives in the form of money or goods, a reduction in the number of tax obligations, etc. The forms of punishment is a criminal prosecution with one-third additional sanctions, a community service order accompanied by supervision, demotion, delaying career promotion for a certain period, and dismissal from a job.

A reward for a justice collaborator is in the form of a judicial pardon, probation, elimination of prosecution, and clemency. Meanwhile, punishments are imposed, such as fines with one-third additional penalties, replacement from a form of lighter playing criminal sanctions to the more substantial, social work penalties accompanied with supervision, termination of employment, and revocation of the right to nominate for public incumbency.

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