

The Effectiveness of Granting Justice Collaboration (JC) for Terrorist Institutions High Risk Pasir Putih Nusakambangan

Alif Fathurochman¹

¹University of Jenderal Soedirman, Purwokerto – Indonesia
 E-mail : alifalfin07@gmail.com

Abstract--*The Bali Bombing incident was the worst act of terrorism which was widely criticized by the international community. The role of justice collaborators like Ali Imron is very large to protect the country from more severe losses and violations of the law that occur. The problems in this research is how the effectiveness of the provision of Justice Collaboration (JC) for terrorist inmates in the Pasir Putih Nusakambangan High Risk Prison? The research method used in the discussion of this writing, the author uses the main approach, namely normative juridical (legal research) and empirical juridical. Thus, in the context of reforming Indonesian criminal law, especially the formil criminal law (criminal procedure law) relating to the regulation of Criminal Justice collaborator, it is necessary to study properly and carefully by reviewing the nature of the existence and role of Criminal Justice collaborator in criminal justice to be able to formulate a legal policy.*

Keywords : *Effectiveness; Granting Justice Collaboration; Terrorist Institutions High Risk.*

I. INTRODUCTION

The Bali Bombing incident was the worst act of terrorism which was widely criticized by the international community [1]. The settlement of the case was not yet complete, terrorism occurred again which was later called the Bali Bombing II incident [1]. At the time this thesis research was conducted, the perpetrators of terrorism in Bali had already been sentenced to death, [1] however, there was a suspect who was sentenced to life sentence and made a justice collaborator, namely Ali Imran [1].

The terms justice collaborator and wistle blowes are quoted from the Supreme Court Circular (SEMA) Number 4 of 2011 concerning the Treatment of Criminal Actions Reporters (Whistle Blowers) and Witnesses of Collaborating Actors (justice collaborators) in Certain Criminal Acts. In SEMA, it is stated that whistle blowers are parties who know and report certain crimes and are not part of the perpetrators of the crimes they report. Meanwhile, justice collaborator is one of the perpetrators of a certain criminal act, admits that he was committed, not the main actor in the crime and provides information as a witness in the judicial process.

Certain criminal acts referred to by SEMA are criminal acts of corruption, terrorism, narcotics crime, money laundering, trafficking in persons, and other organized crimes. Thus, the crime has created serious problems and threats to the stability and security of society.

Witnesses of Collaborating Offenders (Justice Collaborator), as an excuse for criminal mitigation (Norway and Portugal); and as an effort in disclosing complicated organized criminal cases, it becomes interesting to then raise and discuss scientifically the reasons for criminal mitigation for Witnesses of Collaborating Offenders (Justice Collaborator).

To equalize the general understanding of justice collaborators, a Joint Regulation was drawn up signed by the Minister of Law and Human Rights, Attorney General, the Chief of Police, the Corruption Eradication Commission and the Chairman of the Witness and Victim Protection Agency (LPSK). The Joint Regulation regulates the Protection for Reporting Parties, Reporting Witnesses and Collaborating Actor's Witnesses. There are four rights and protections stipulated in this joint regulation. First, physical and psychological protection for whistle blowers and justice collaborators. Second, legal protection. The three special treatments and finally received an award.

For special handling, there are several rights that the justice collaborator can obtain. Namely, the detention of the place of detention from the suspect or other defendant is separated from the crime being disclosed, the case filing is carried out separately from the other suspect or defendant in the reported case.

Then, can obtain a postponement of prosecution against him, obtain a delay in legal proceedings such as investigations and prosecutions that may arise because of the information, reports and / or testimonies he provides. As well as being able to testify before the trial without showing his face or showing his identity.

In addition to special handling, witnesses as well as perpetrators of these crimes can receive awards in the form of lightening of sentencing, including

demands for probation. As well as obtaining remissions and other prisoners' rights in accordance with applicable laws and regulations if the perpetrator witness who collaborates is a prisoner. All of these rights can be obtained by justice collaborator with the approval of law enforcement.

As is well known, Bali bombing defendant Ali Imron was sentenced to life imprisonment by the Denpasar District Court in 2003. The defendant's actions constituted an act of crimes against humanity and extraordinary crimes, causing other people to become involved, such as the East Kalimantan group who hid the defendant in Kalimantan [2]. While mitigating considerations, the defendant feels guilty, is forthright and sincerely admits his actions were committed by his group and helps the police to uncover other cases of terrorism or what is called a justice collaborator.

The role of justice collaborators like Ali Imron is very large to protect the country from more severe losses and violations of the law that occur [3]. But the risk that Ali faces is also great when exposing crimes, such as getting threats to security so that it is important to protect justice collectors [4].

II. PROBLEMS

Based on the background of the problems described above, the author can formulate a problem, namely how the effectiveness of the provision of Justice Collaboration (JC) for terrorist inmates in the Pasir Putih Nusakambangan High Risk Prison?

The purpose of this study was to determine the effectiveness of the provision of Justice Collaboration (JC) for terrorist inmates in the Pasir Putih Nusakambangan High Risk Prison.

III. RESEARCH METHOD

The research method used in the discussion of this writing, the author uses the main approach, namely normative juridical (legal research) and empirical juridical as a support for the normative juridical approach, the source of the writing data is obtained from the literature with the type of data in the form of primary data and secondary data. Residents assisted by the Pasir Putih Nusakambangan High Risk Prison. In this study, statute approaches and conceptual approaches are used.

IV. DISCUSSION

The definition and definition of terrorism is still being debated even though there are experts who have formulated it and formulated it in statutory regulations. However, the absence of an international legal definition of terrorism does not

automatically negate the legal definition of terrorism. Each country defines according to its national law to regulate, prevent and combat terrorism.

The words "terrorist" (perpetrator) and terrorism (action) come from the Latin word "terrere" which people make trembling or tremble more. The word terror can also cause horror [5]. Of course the horror in the hearts and minds of the victims. However, until now there is no universally accepted definition of terrorism. Basically, the term terrorism is a concept that has a very sensitive connotation because terrorism causes the murder and torment of innocent people [6].

The definition of terrorism was discussed for the first time in the European Convention On The Suppression Of Terrorism (ECST) in Europe in 1977 there was an expansion of the paradigm of meaning from Crimes Against State to Crimes Against Humanity. Crimes Against Humanity includes criminal acts to create a situation that results in individuals, groups, and the general public in an atmosphere of terror [6]. In terms of human rights, Crimes Against Humanity is included in the category of Gross Violation of Human Rights which is carried out as part of a widespread or systematic attack where it is known that the attack was aimed directly at the civilian population, especially directed at innocent souls as was the case in Bali.

In Article 1 of the Perpu No. 01 of 2002 concerning the Eradication of Criminal Acts of Terrorism (now it has been ratified as Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism), that terrorism is an act against the law systematically with the intention of destroying the sovereignty of the nation and the State by endangering the body, life, morals, property and freedom of people or causing general damage or an atmosphere of terror or widespread fear of people, resulting in destruction of vital strategic objects, basic needs of the people, the environment, morals, civilization, State secrets, culture, education, the economy, technology, industry, public facilities, or national facilities.

Based on various opinions and views on the definition of terrorism above, it can be concluded that terrorism is organized violence, placing violence as awareness, a method of thinking as well as a means of achieving goals. From the various definitions of terrorism above all forms of terrorism cannot be justified because its main characteristics are; Aksi yang digunakan menggunakan cara kekerasan dan ancaman untuk menciptakan ketakutan publik.

1. Addressed to the state, society or certain individuals or groups of people.
2. Rule its members by means of terror as well
3. Committing violence with the intention of getting support in a systematic and organized manner.

The acts of terror that occurred in Indonesia were related to the weakness of the authorities / supervision of the government in power against certain groups that deliberately wanted to create an atmosphere of terror in society. A series of acts of terror will emerge if the political situation provides an opportunity for the perpetrators to spread terror so that the political will / will of terrorists can be forced on a government that does not have a firm attitude towards violence (the act of terror). The stronger the impression that coercion by means of terror allows for political negotiations, the greater will the act of terror appear. On the other hand, the wider the general impression and opinion that physical coercion will not be tolerated in a political system, the less terror will emerge [7].

It is proven that in Indonesia the weakness of central government control since the Asian financial crisis of 1997-1999, with the replacement of President Suharto's authoritarian regime in 1999, then former Indonesian President Megawati Sukarno Putri in 2002 was under pressure from Islamic political parties, as well as a power struggle took place among the Indonesian political elite to control the government, resulting in the development of fundamentalist Islamic theology with the birth of radical groups such as Laskar Jihad and the Islamic Defenders Front which took advantage of many internal problems of the Indonesian state [8].

The picture of the emergence of radical groups in Indonesia can be seen from the results of the investigation by the Indonesian National Police in the Bali Bombing case, which shows that there is a complex relationship between individuals and groups that commit violence and global terrorism, at least two patterns were found in the investigation, including: First, some of the bombers were alumni of the Ngruki Islamic Boarding School, under the leadership of Abu Bakar Ba'asyir, who is believed to be the spiritual leader of Jama'ah Islamiyah (JI), a radical group in Southeast Asia. Second, some of the perpetrators had lived in Malaysia during Abu Bakar Ba'asyir's period of exile, when he fled Indonesia from Suharto's harsh or tough government against state rebels.

The crime of terrorism can be categorized as a criminal act. The elements to include terrorism as a criminal act can be identified from basic aspects, particularly the understanding of criminal acts and other aspects. Dogmatically, to say that an act is a criminal act, it must contain a complete description of the elements, among others:

- 1) The act is against the law
- 2) The act is punishable by law
- 3) The act was done by the guilty person, and
- 4) The person is deemed to be responsible for his actions [9].

The above criminal acts of terrorism are contained in the formulation of Article 6 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism which qualify as material offenses. It is stated in Article 6 that every person who deliberately uses violence or threats of violence creates an atmosphere of terror or fear towards people widely or causes mass casualties, by taking away freedom or the loss of life and property of others, or causing damage or damage. Destruction of vital strategic objects or the environment or public facilities or international facilities, is punishable by death penalty or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. This article is included in the material offense, which emphasizes the prohibited consequences, namely loss of life, loss of property or damage and destruction. Even if what is meant by 'environmental damage or destruction' is the contamination or destruction of the unity of space with all objects, forces, conditions, and living things including humans and their behavior, which affects the continuity of life and the welfare of humans and other creatures. Including damaging or destroying is intentionally releasing or disposing of dangerous or toxic substances, energy and / or other components into the soil, air, or surface water which are harmful to people or property.

There are several terms to describe the involvement of a criminal in the disclosure of a criminal case he has committed. These terms include Plea Bargaining, Crown Witness, Whistleblower, and Justice Collaborator.

The public more often knows the perpetrator witness as the Justice Collaborator (JC). The term Justice Collaborator actually appears from the Supreme Court Circular (SEMA) Number 04 of 2011. Justice Collaborator in SEMA is a substitute term for the perpetrator witness who collaborates. The second item in the SEMA states "In an effort to foster public participation in uncovering criminal acts (as referred to in point one), a conducive climate must be created, among others by providing legal protection and special treatment to everyone who knows, reports, and / or find something that can help law enforcement officials to reveal and deal with the crime in question effectively..

Witnesses have a very important role in the criminal justice system. This is because the testimony given by the witness often influences the judge in making a decision. In the existing criminal justice system practice, witnesses are often unable to provide real information in every criminal case. The role of the witnesses is not maximal in providing the true and best possible testimony due to a form of threat that was received during the trial. Based on this consideration, the role of the witness should be given a form of good legal protection as a witness.

According to Article 1 Number 26 of the Criminal Procedure Code, a witness is: "A person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case which he has heard himself, has seen for himself, and experienced himself". The victim can also act as a witness in court as contained in Article 160 Paragraph (1) b of the Criminal Procedure Code which reads: "The first thing to hear is the victim who is the witness". The victim who acts as a witness is usually a witness against the suspect / defendant (a charge). The victim's witness is an important witness or main witness who can explain the real problem. This witness can also be called a crown witness (Kroen Getuide) [10].

Witnesses in criminal justice hold key positions, as seen in their placement in Article 184 of the Criminal Code. In general, the evidence for the testimony of witnesses is the most important means of evidence in a criminal case. It can be said that there is no criminal case that escapes the evidence of the witness testimony. In addition to other evidence, at least, it is always necessary to prove it by means of evidence from witness testimony [11].

The position of the witness protection law in the statutory system in Indonesia in the entire statutory system, in fact there is only a small portion for witnesses, even barely contained in legislation. After the reforms there was only attention to witnesses and the importance of protecting their rights and obligations. Juridically, the law that regulates the rights and obligations of witnesses is contained in Law Number 13 of 2006 [11].

Justice Collaborator is the party who knows and reports criminal acts and is part of the perpetrators of the crimes they report. A person can be said to be a Justice Collaborator if he or she is involved in the crime that he discloses.

Justice Collaborators or perpetrator witnesses who work together receive the protection provided by law, are as follows:

- a. Witnesses, Victims, Perpetrators' Witnesses, and / or Reporters cannot be prosecuted legally, either criminal or civil, for the testimony and / or report they are about to give, are being, or have given, unless the testimony or report is not given in good faith.
- b. In the event that there are lawsuits against Witnesses, Victims, Perpetrators' Witnesses, and / or Reporters for testimony and / or reports that will be, are being, or have been given, the lawsuit must be postponed until the case that he reports or testifies has been decided by the court. and obtain permanent legal force [12].

Apart from the two things above, Justice Collaborators can be given special handling in the examination process and reward the testimony

given. Special handling that can be given by the state to the Justice Collaborator is in the form of:

- a. separation of the place of detention or the place of serving a criminal offense between the perpetrator's witness and the suspect, defendant and / or prisoner whose criminal offense has been disclosed;
- b. separating the filing between the perpetrator's witness's file and the suspect's and defendant's files in the process of investigation and prosecution of the criminal act they disclosed; and / or.
- c. give testimony before the trial without dealing directly with the defendant whose criminal offense is revealed

This means that Justice Collaborators get special handling before the verdict falls in court. Furthermore, Justice Collaborator was also awarded for the testimony given, in the form of:

- a. relief of criminal imposition; or
- b. parole, additional remission, and the rights of other prisoners in accordance with the provisions of the statutory regulations for perpetrator witnesses who are convicted.

So, the award for testimony is given at the verdict stage by the Judge in court. So that they get "special treatment" starting from the status of a suspect, defendant to convicted person according to what is stated in the definition of a perpetrator witness in the General Provisions of the Law on Witness and Victim Protection. The difference between the special handling in the examination process and the award for the testimony given can be seen from the choice of conjunctions for each type. If the handling specifically ends with a conjunction "and / or" which states the cumulative and alternative properties. This means that one, two, or even all three of the three special treatments above can be given. This is made possible by the word "and / or" in an Article norm. It is different from the appreciation for the testimony which ends with the conjunction "or" which states the alternative character. This means that from the two awards for the testimony above, the law only provides one, if one has been given then the other cannot be given.

If viewed from the substance contained in the draft revision of Law Number 13 of 2006, it can be said that the government has realized the importance of the role of Justice collaborator in criminal justice, especially in exposing organized crime so that it requires a strong legal basis to provide protection to Justice collaborator. In the aspect of criminal procedural law itself, the regulation of criminal collaborator witnesses is carried out by revising the provisions contained in the Criminal Procedure Code (KUHP) by providing adequate regulations in criminal justice. In the current draft revision of the Criminal Procedure Code, it has included regulations regarding crown witnesses who have not

previously been regulated in the criminal justice process.

However, the term used in the Criminal Procedure Code has a difference and does not recognize the term Justice collaborator to refer to someone who helps law enforcement officials to help uncover criminal acts. KUHAP uses the term Crown witness, which is a legal term used in the Dutch *Wetboek van Strafvordering* (KUHAP). Although there are similarities between the crown witness and Justice collaborator, namely that both are perpetrators of a criminal act, if viewed from the aspect of the initiative to provide information / information about a criminal act, there is a significant difference between the crown witnesses known in the Criminal Procedure Code and Justice Collaborator which is a term adopted from America.

For the crown witness, the initiative to provide information came from law enforcement officials who had difficulty uncovering a crime due to a lack of other evidence (*minimum bewijs*) so that law enforcement officials took one of the actors who had a minimal role to be a witness against other perpetrators by means of separating the case file (split) between the crown witness and other perpetrators.

Whereas in Justice collaborator, the initiative to provide information / information about a criminal act comes from within the perpetrator who consciously admits the act he has committed and then assists law enforcement officials by providing information related to the criminal act he has committed and the involvement of other main actors in the criminal network. Thus, the term currently used in the revision of Law Number 8 of 1981 concerning KUHAP, namely crown witness to refer to a perpetrator who is made a witness by law enforcement officials has a different meaning from the term Justice collaborator which is meant to refer to someone who helps. Law enforcement officials at one time or another for the future, in other words, that criminal law politics tries to examine the changes that have occurred in order to be able to reformulate the current legislation (*Ius constitutum*) into future legislation (*Ius constituendum*). So that these regulations can be effective and apply effectively in accordance with the expected objectives.

Thus, in the context of reforming Indonesian criminal law, especially the formill criminal law (criminal procedure law) relating to the regulation of Criminal Justice collaborator, it is necessary to study properly and carefully by reviewing the nature of the existence and role of Criminal Justice collaborator in criminal justice to be able to formulate a legal policy. good criminal law, so that the politics of criminal law related to Criminal Justice collaborators in criminal justice can achieve the desired targets in order to eradicate criminal acts in

realizing a just, safe, prosperous and prosperous Indonesian society.

V. CONCLUSION

Witness perpetrators who cooperate (Justice Collaborator) have a very important role in providing information to law enforcers in exposing criminal acts of terrorism in Indonesia. Terrorism is an extraordinary crime that is of concern to the world today which is classified as a crime against humanity, and is a serious threat to the sovereignty of every country because terrorism is an international crime that poses a danger to security, world peace and is detrimental. community welfare needs to be eradicated in a planned and sustainable manner so that the human rights of the people can be protected and upheld. So that someone with the status of Justice Collaborator should be given a reward in the form of an award for relief from the imposition of criminal sanctions for the information provided.

The Criminal Procedure Code does not yet regulate the provisions regarding justice collaborators except the RI Law Number 13 of 2006 concerning Witness / Victim Protection. This Law also does not provide "special rights" to a justice collaborator, except for a mere "whistle blower". The regulation of Justice Collaborator in Indonesia is still experiencing a legal vacuum, therefore reforming the criminal procedure law or new rules regarding Justice Collaborator is very important to be formulated and realized by the legislative body in Indonesia.

REFERENCES

- [1] I. Pangu, "Eksekusi Usai, ke Mana Ali Imron?", *Inilah.com*, 2020. [Online]. Available: <https://inilah.com/news/60744/eksekusi-usai-ke-mana-ali-imron>. [Accessed: 16- Nov- 2020]
- [2] A. Wicaksono and O. Setiawan, "Tiga Anggota Kelompok Kaltim Divonis Penjara", *Liputan6.com*, 2003. [Online]. Available: <https://www.liputan6.com/news/read/64079/tiga-anggota-kelompok-kaltim-divonis-penjara>. [Accessed: 16- Nov- 2020]
- [3] Abdul Haris Semendawai, et al., *Memahami Whistleblower*, Jakarta : Lembaga Perlindungan Saksi dan Korban, 2011.
- [4] Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 1 Tahun

- 2002 Tentang Pemberantasan Tindak Pidana Terorisme Pasal 33-34.
- [5] Abdul Wahid, *Kejahatan Terorisme Perspektif Agama, HAM dan Hukum*, Bandung: Retika Aditama, 2004.
- [6] Tim Penyusun, *Kamus Besar Bahasa Indonesia Pusat Bahasa*, Jakarta: PT. Gramedia Pustaka Utama, 2008,
- [7] Congressional Research Service (CSR), *Terorism in Southeast Asia*, Coordinator: Bruce Vaughn, CRS Report for Congress, Order Code RL31672, Updated February 7, 2005
- [8] *Indonesia Today-Problem and Perspectives: Politics and Society Five Year into Reformasi.*, Edited by : Norbert Eschborn, Sabrina Hackel, dan Joyce Holmes Richardson, Jakarta : Konrad-Adenauer-Stiftung (Yayasan Konrad Adenauer), 2004
- [9] Andi Hamzah, *Asas-Asas Hukum Pidana*, Jakarta: Rineka Cipta, 1994.
- [10] Oktavianus G R. “Hak Dan Kewajiban Yang Mengikat Terhadap Saksi Di Dalam Praktik Persidangan Pidana”. *Jurnal Lex Crimen*. Vol. 1. No. 4., 142-161, 2012.
- [11] M. Yahya Harahap. *Pembahasan Permasalahan dan Penerapan KUHAP*. Jakarta. Sinar Grafika. 2005
- [12] Pasal 10 Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban