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The Urgency of Granting Authority to Assess Corruption Justice Collaborators

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Abstract

This study aims to determine the urgency of the authority of investigators in the determination of justice collaborators in criminal acts of corruption. In answering the above problems, the research method used is doctrinal research. This study applies a case approach and concept. While the method of data collection is done by examining case studies and literature studies or mere secondary data. So if the Urgency of Giving the authority of the investigator in questioning the determination of justice collaborator in a criminal act of corruption, the author sees that there are 3 (three) things that become the basis for the urgency of granting authority to determine Justice Collaborator by the investigator, including: a. philosophical, b. juridical, and c. sociological. said to be important because it has become a common perception for investigators and police investigators about the massive and organized circulation of corruption networks at this time, in the investigation process often investigators find the potential of the existence of a saski crown that could become the role of justice collaborator.

Keywords: Justice; Justice Collaborator; Corruption.

Abstrak

Penelitian ini bertujuan untuk mengetahui urgensi pemberian kewenangan penyidik dalam penetapan justice kolaborator dalam tindak pidana korupsi. Dalam menjawab permasalahan di atas, metode penelitian yang digunakan adalah penelitian doktrinal. Penelitian ini melakukan pendekatan kasus dan konsep. Sedangkan metode pengumpulan datanya dilakukan dengan cara meneliti studi kasus dan studi pustaka atau data sekunder belaka. Sehingga jika dipertanyakan Urgensi dari Pemberian kewenangan penyidik dalam penetapan justice kolaborator dalam tindak pidana korupsi maka penulis melihat terdapat 3 (tiga) hal yang menjadi dasar mengapa urgensi terhadap pemberian kewenangan penentuan Justice Collaborator oleh penyidik, antara lain: a. filosofis, b. yuridis, dan c. sosiologis. dikatakan penting dikarenakan telah menjadi anggapan umum bagi penyidik dan penyidik POLRI tentang massif dan tindak Pidana korupsi narkoba saat ini, dalam proses penyidikan cap kali penyidik menjumpai potensi tentang adanya saski mahkota yang bisa menjadi peran justice collaborator.

Kata Kunci: : Keadilan; Justice Collaborator; Tindak Pidana Korupsi.

Introduction

Crime is a social problem that is generally faced by many countries. From time to time, crime has developed both types of crime, the subject of crime and how to commit the crime. In its development, crime is no longer committed by individuals, but can also be committed by corporations and carried out in an organized manner. Corruption is one of organized crime. In handling corruption, several new terms have emerged, including the term justice collaborator, which

in the Act is interpreted as a witness to the collaborating perpetrators. The emergence of this "figure" of justice collaborator gives new hope in handling corruption, because with the presence of witnesses who are also perpetrators willing to cooperate, it is hoped that corruption criminal cases can be thoroughly disclosed. (Hartnett, S.J., Shaou-Whea Dodge, P., Keränen, L.B., 2020)

Corruption is a crime that has the nature and character as an extraordinary crime (extraordinary crime). There are four characteristics and characteristics of corruption as extra ordinary crime: (Edward O.S Hiariej, 2012)

1. Corruption is an organized crime that is carried out systematically,
2. Corruption is usually done with a difficult modus operandi so that it is not easy to prove it,
3. Corruption is always related to power,
4. Corruption is a crime related to the lot of people because the financial losses of the state are very beneficial for improving people's welfare.

The emergence of the idea of Justice Collaborator is the result of ratification of the convention on corruption, namely the United Nations Convention Against Corruption (UNCAC) 2003 which was later ratified by Indonesia in the form of Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003 Anti Corruption Nation). Justice Collaborator is a suspect, defendant or convict who cooperates with law enforcement to uncover a crime in the same case, as regulated in Article 1 Number 2 of Law Number 13 Year 2006 jo. Law Number 31 of 2014 concerning Protection of Witnesses and Victims (Wini Kusumawardhani & Subekti, 2019).

Given the complex nature and characteristics of criminal acts of corruption as the author has previously described, extraordinary efforts are needed to be able to deal with and eradicate them. One of the efforts so that corruption can be thoroughly investigated is to take advantage of the position of witnesses who are willing to cooperate. The willingness of the witnesses to carry out this collaboration by the Act is given a reward or award, among others in the form of committing criminal offenses. However, at this time a problem arises, namely the authority of the Indonesian National Police as an institution that has the authority to conduct investigations, (Law No. 2 of 2002) not found the maximum authority in the narcotics crime. This can be seen in the indifference of corruption investigators or KPK to establish someone as a justice collaborator. The inability of the investigator to determine justice collaborator creates difficulties for law enforcement officials to eradicate corruption in a comprehensive manner, on the other hand this will result in an attitude of doubt for a perpetrator to provide information to the investigator because the status of establishing justice collaborator is still the authority of the judge. (SEMA No. 4 of 2011).

Although the Law stipulates that for collaborating witnesses the award is given in the form of criminal relief, but in practice the provisions regarding

awarding¹⁰ in the form of criminal relief for witnesses in collaboration (justice collaborator) have not been fully implemented. There are still court decisions that have not considered the defendant's status as a justice collaborator. The role of the Justice Collaborator in particular in corruption in Indonesia today still raises many pros and cons. One of them is the determination of the Justice Collaborator in criminal acts of corruption that do not yet have the same view in law enforcement. Related to this, one of the cases that indicated a problem related to the establishment of the Justice Collaborator was a corruption case which was also carried out by Abdul Khoir. Abdul Khoir is the Managing Director of PT. Windhu Tunggal Utama involved in corruption of infrastructure projects in Maluku and North Maluku. Abdul Khoir as one of the perpetrators also acted as a liaison between his friends namely So Kong Seng as Commissioner of PT. Light Mas Perkasa and Hong Arta John Alfred as Director of PT. Sharleen Raya (JEco group) with Amran HI Mustary as Head of BPJN IX Maluku and North Maluku and several members of Commission V of the Indonesian Parliament.

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In the investigation process by the Corruption Eradication Commission (KPK), Abdul Khoir then agreed to become a Justice Collaborator to assist the Corruption Eradication Commission (KPK) in exposing the corruption of the infrastructure project. The determination of the status of Justice Collaborator Abdul Khoir was stated in the Decree of the Head of the Corruption Eradication Commission (KPK) Number: 571 / 01-55 / 05/2016 dated May 16, 2016. In the trial process, Abdul Khoir confirmed the matters charged by the Public Prosecutors Commission of the Commission Corruption Eradication (KPK) against him and he stated that he was forced to follow the directions of the wrong project game system because of encouragement from his friends. Public Prosecutor Corruption Eradication Commission (KPK) in considering the status of Justice Collaborator Abdul Khoir sued Abdul Khoir with imprisonment for 2 (two) years 6 (six) months and a fine of Rp. 200,000,000 (two hundred million rupiah) subsidair for 5 (five) months, but the Judge argued differently where the Judge considered that Abdul Khoir was the main actor in the corruption of the infrastructure project and was not a Justice Collaborator.

This caused Abdul Khoir to be sentenced to 4 (four) years in prison and a fine of Rp. 200,000,000 (two hundred million rupiah) subsidair 5 (five) months. Based on this, the Public Prosecutor's Corruption Eradication Commission (KPK) considers that the judge has mistakenly sentenced Abdul Khoir who is a Justice Collaborator, because the judge should be able to provide special treatment by providing criminal relief and / or other forms of protection against Justice Collaborator as regulated in Item 7 of the Supreme Court Circular Letter Number 4 of 2011 concerning Treatment for Whistleblowers and Justice Collaborators.

Another example is in the Corruption Court's decision against the defendant Kosasih Abbas in the case of procurement and installation of the SHS (Solar Home System) for the 2007-2008 fiscal year imposing a sentence of 4 years imprisonment and a fine of 150 million Rupiah in a 3-month confinement subsidiary and must pay compensation money amounting to 550 million Rupiah. In its decision the judge did not mention and did not consider Kosasih's status as a witness to the collaborating perpetrator. The judge only considered the position of the Defendant Kosasih in mitigating matters, namely the Defendant acknowledged his actions and frankly before the trial so that he behaved cooperatively, served the country as a civil servant for a long time, was polite at court, and had family responsibilities. There is no explicit consideration stating Kosasih's role as JC as stated in the prosecution's demands. (CIN, 2013)

The court's ruling should provide a "new breakthrough" in terms of making things easier for Kosasih by considering "the demands of the public prosecutor" and expressly stating that Kosasih is a justice collaborator, through mitigating things. (Arsil et.al , 2015) The decision of the DKI High Court in the case of the Defendant Kosasih is to strengthen the decision of the Corruption Court. In its decision the High Court Judge considered the role of Kosasih as a Justice Collaborator. At the Cassation Level, the Supreme Court rejected the petition of the petitioners and handed down a sentence of 5 years in prison minus a period of detention and a fine of 200 million Rupiah 6 months confinement and substitute money of Rp 2,388,975,500 one year imprisonment. Then, the Decision of the Corruption Court Against Defendant Andi Agustinus alias Andi Narogong in the E KTP project corruption case, the judge sentenced him to 8 years in prison plus a fine of 1 billion Rupiah in 6 months confinement plus paying a replacement fee of 1,186 billion Rupiah. At the appeal level, the Court of Appeal sentenced 11 years in prison plus a fine of 1 billion Rupiah for 6 months confinement and a replacement money of 1,186 Billion Rupiahs for 3 years in prison. (Kompas, 2018)

In its decision, the High Court overturned Andi Narogong's status as a Justice Collaborator. The cancellation was quite surprising to the KPK. KPK spokesman Febri Diansyah stated that Andi Agustinus was not the main perpetrator and he had given the widest possible information including regarding Setya Novanto and acknowledged his actions so as to be given JC status. (Tempo,

2018) At the Kasasi level, the Supreme Court sentenced 13 years to prison plus a fine of 1 billion Rupiah 6 months confinement subsidiary and replacement money of 1,186 billion Rupiahs 3 years confinement confinement.

In the court's decision stated, it can be seen that among law enforcers there is no common understanding in reading and implementing laws and regulations so that there is a need for a forum that can create a common understanding among law enforcers in reading and applying the rules on justice collaborator. Therefore, there is no rejection of the status of justice collaborator that has been approved and then canceled by other law enforcers and there is certainty for the suspect or defendant who is willing to be a witness to the collaborating perpetrator that he will get relief in criminal conviction. This will encourage the suspect or the defendant to work together to uncover the criminal act of corruption completely. In addition, for law enforcement in the field of corruption to run optimally, a stronger collaborator of justice is needed and is binding on all law enforcers, it can be in the form of a Presidential Regulation or in the form of an Act that is binding on all law enforcement.

Some of these cases prove that there is a problem related to the establishment of a Justice Collaborator that lies in the existence of different perceptions between law enforcement officers. This will have an impact from the problems related to the establishment of Justice Collaborator resulting in legal protection obtained by Justice Collaborator is not optimal. So through this paper the authors offer an idea that the author will explain both in terms of philosophical, sociological and juridical in the context of renewal of criminal procedure law, especially corruption in order to give authority to investigators related to the determination of the status of justice collaborator.

Research Methods

This type of research used in compiling this research is normative legal research. Normative legal research is more focused on library research, namely collecting data from various literatures both from libraries and other places (Hermawan Wasito, 1997) This normative legal research focuses on the principle-as legal principles, legal systematics, law synchronization, legal history in the formation of the Constitutional Court and state institutions in Indonesia (Soerjono Soekanto, 2018) This study uses secondary data. Secondary data collection tools in the form of books relating to the theory and concept of research objects, related articles, literature on scientific papers and so on through literature study. (I Gusti Ayu Ketut Rachmi Handayani, Lego Karjoko, Abdul Kadir Jaelani, 2019)

Discussion

1. Philosophical Reasons for Creating Judicial Collaborators to Eliminate Corruption

It is understood that the official leadership of Indonesia as a State enshrined in the Republic of Indonesia Constitution of 1945 and its opening, in the

Constitution of 1945 and its opening, incorporates the doctrine of Pancasila as a philosophy of life and the views of every Indonesian person in the country and state. As a state philosophy, therefore, Pancasila is usually called the state fundamental norm or the state's fundamental norm. This fundamental standard animates the norms laid down in the Republic of Indonesia's Constitution of 1945, which is then generally referred to as grandnorm or simple norms. (Moh. Mahfud MD, 2011). So that the two norms which exist in the Republic of Indonesia's 1945 Constitution along with the opening must be the basis of all Indonesian legal order, both the legal order in the regulatory aspects of the product and the legal order in the dimension of the source of authority (the concept of lawfulness).

With regard to the substance of the opening of the Republic of Indonesia Constitution of 1945 concerning the State's duty to protect all its citizens, in this case it is very important to understand the concept of security as, in this context, the preservation of the rights of individuals eroded by corrupt practices. As discussed in the previous discussion, one of the major challenges that investigators face when it comes to discovering who the actors involved in corrupt activities are is the guarantee to the offenders related to the authority to decide the collaborator of justice, even though indications are emerging at that point. Around a vast network of drug distribution, such that this restriction is a significant obstacle for investigations of criminal acts of corruption, in the sense of ensuring the integrity of the nation's and state's lives.

As a basic and initial stage, of course the results of investigations and investigations into investigators of criminal acts of corruption are sourced from data or symptoms that are basic as well, so that the first party to understand the basic pattern itself is the investigator. From this basic pattern, it turns out that there are a variety of complex problems related to the authority of investigators, one of the problems is the authority of investigators of corruption in determining justice collaborators. Then it is not impossible for law enforcers who understand and understand the basic pattern in the massive system of criminal acts and their powerlessness to become the problem estuary because they do not have the authority. Therefore, based on the description above and as an effort to carry out the mandate of state fundamental norms, it is deemed necessary to grant authority for investigators of narcotics crime to determine justice collaborator. (Madjid, A., 2020)

So far the authority referred to has been given little space by SEMA No. 4 of 2011 concerning the Treatment of Whistleblowers and Justice Collaborators in Certain Crimes, this has become a separate issue in terms of sources of authority. But that authority is still limited to the judge's authority, not to other organs or institutions (POLRI). This situation raises problems from aspects of the principle

of legality that can be questioned in terms of the source of authority when it is used as a basis or source of authority for investigators of criminal acts of corruption in determining justice collaborators.

2. Legal Reasons and Sociology for Creating Judicial Collaborators to Eliminate Corruption

Criminal acts of Corruption and the impact caused by it has become an acute problem in the life of the nation and state, it is fitting for this matter to be given more attention, like other extraordinary crimes (extra ordinary crime). Actually Indonesian criminal law policy has realized the importance of the steps above, namely the government has issued SEMA No. 4 of 2011 as a reference for law enforcers to determine an offender as a justice collaborator, it is hoped that by issuing the SEMA, law enforcement officials can reduce the increasingly intensive and massive distribution of narcotics. However, in the hierarchy of laws and regulations that SEMA is not a rule that can be generally accepted. Its scope of validity is limited to the internal scope of the subject of its issuer, so in other words SEMA has no binding power on law enforcement other than the Supreme Court and law enforcement agencies under it.

The importance of justice collaborator status for users in the early stages of this investigation is due to two things, regarding the time efficiency and work effectiveness. As soon as he is appointed as a justice collaborator, narcotics users (suspects) will be more cooperative in working together, because they already know that there will be a reduction or mitigation of the threat of punishment for them. Under these circumstances, it will be easier and faster for investigators to immediately take action by giving the bait to them so that they can immediately pursue other corrupt actors involved in the dug. (Brown, D.J., 2020)

That is because it has become a common perception for investigators and police investigators about corrupt practices at this time, in the process of investigation often investigators find the potential of the existence of the saski crown that could become the role of justice collaborator. That role can be concretized by making those who are not the main actors as feedback that will lead to the rounds of dealers and even dealers, that feedback will be realized if in the initial stages of the investigation they are given the role of justice collaborator.

Unlike the case when the status of justice collaborator is waiting for the decision of the judge in the final decision (verdict). There is a kind of doubt and fear that arises from the users (bait) when it is told that their cooperation will have a positive impact, namely the determination as a justice collaborator. The fear arises because they assume that there will be a threat from dealers or dealers, these users fear that when they play a role in dismantling the network will have a negative impact on their lives and security. The psychological pressure was exacerbated by their doubts about the results of the trial by the judge who apparently did not establish them as justice collaborators. The possibility that is also worth considering is that it is very likely that other suspects will escape or lose evidence when they find out one of their colleagues has been captured. The

stages of investigation, prosecution, trial and verdict are a series of long enough periods for them to escape or lose evidence or conducive themselves.

On the other hand, narcotics crime investigators are not authorized to designate an offender as a justice collaborator due to authority constraints. So that investigators are not able to convince users that by cooperating cooperatively there will be a reduction and also relief from the threat of punishment for them, so the issue of authority becomes a problem that is worthy of consideration. Such conditions often appear during the investigation stage in narcotics crime, so it is felt that it is necessary to give authority to investigators of criminal acts of corruption to establish justice collaborator.

The situation that is also worthy of consideration is, when the perpetrators of corruption have actually detected both patterns and ways of working through the perpetrators who have been detained, but due to authority constraints the investigator cannot designate these actors as justice collaborators, even though the opportunity to enter the network great sangtlah. The perpetrators who have been detained will not necessarily cooperatively cooperate with investigators for reasons of doubt as has been described above. The doubts are caused by none other than the authority of the investigator in establishing justice collaborator. Because this authority is only limited to the judge's authority until now. As well as many other things which of course will only appear at the basic stages of investigation and investigation.

The limited tools ⁶ eradicate corruption, both in terms of rules, budget, and technics, resulted in the disclosure of limited criminal acts of corruption. Whereas the opportunity to investigate more closely related to that matter is at the investigation stage, the judge at the trial stage receives the finished material which is materially processed and is determined by the results of the investigation.

The above situation can be described simply by analogous to the teaching about the pattern of the relationship between material law and formal law. If it is said that formal law is a finished product of positive law in the form of a series of statutory regulations (Laws, PPs, Perpres, etc.), it is very important to identify and determine the material laws that originate from the national outlook on life as well as various regularities. order that is patterned in society, because of material law (raw material) this is the formal law processed and enforced. In short, it can be said that it is very important to determine the feasibility of raw materials (material law) before these raw materials are processed and become finished products that can be used according to their functions (in this case formal law). (Moh. Mahfud MD, 2013)

The description above would like to say that investigation as a basic stage in uncovering a criminal offense must be equipped with various instruments that are able to guarantee the quality or feasibility of an investigation, because this basic stage or raw material (material) will also determine the quality and feasibility of the decision. The quality and feasibility can be seen from the exposure to time efficiency and work effectiveness, because in carrying out their duties as law enforcement officers, the Indonesian National Police is not limited

to handling criminal acts. It means, besides being a law enforcement officer, the Indonesian National Police also has a preventive duty to the community.

In the context of determining the judge collaborator justice, it can be said as a party that uses finished material (formal) whose quality and feasibility is determined by the basic stages of investigation (material). Therefore, in order to guarantee the quality or feasibility of the results of investigations in the context of narcotics crime, it is very important to give authority for narcotics crime investigators to establish justice collaborators. Because from this basic stage the potential for the role of justice collaborator will be comprehensively illustrated and identified.

Conclusion

The conclusion from the discussion above is that there are 3 (three) items that are the basis for the necessity of granting authority by investigators to recognize Justice Collaborator, including in theory, legally, and sociology. This is said to be relevant because it has become a common understanding of the widespread corruption of criminal activities for police officers and prosecutors, and in the investigative process the investigator also discovers the possibility of the presence of a saski crown that may become a collaborator of justice.

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