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Legal Efforts of Justice Collaborator In Corruption Crime

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ABTRACT

In writing this paper the author discusses about Legal Effort for Cooperating Witness (Justice Collaborators) in Corruption Crime. This is motivated by legal effort because of the lack of legal protection for the actors who Cooperating Witness (Justice Collaborators) in Indonesia. So the author wants to do a juridical study of the status of the Cooperating Witness (Justice Collaborators) and the legal effort of the witnesses who are status as Cooperating Witness (Justice Collaborators).This is done to find a concept that can be incorporated into the criminal justice system in Indonesia. So that it is hoped that a good form of protection will be created for the Cooperating Witness (Justice Collaborators) who in the end can be a good step to provide opportunities for the public to provide information and information in uncovering serious and organized crimes in the future.

Keywords: Justice Collaborator, Corruption

1. INTRODUCTION

In June 2020, the status of Justice Collaborator named M. Nazaruddin was highly discussed. The Directorate General of Correctional Affair at the Ministry of Law and Human Rights previously appointed Nazaruddin as a justice collaborator by the Corruption Eradication Commission HukumOnline, (hukumonline.diakses tanggal 23 Nopember 2020). (Indonesian: Komisi Pemberantasan Korupsi) based on letter number R-2250/55/06/2014 dated June 9, 2014 regarding a certificate on behalf of Muhammad Nazaruddin; Letter Number R.2576/55/06/2017 dated June 21, 2017 regarding requests for information that he has collaborated with law enforcement (Mietzner, 2015). However, KPK denied issuing this status. The cooperation certificate was issued on the grounds that M. Nazaruddin- since the investigation, prosecution and trial process- has revealed the corruption case for the construction of the Hambalang National Sports Facilities Education and Training Center, the case for procuring E-KTP at the Ministry of Home Affairs and the case with the defendant Anas Urbaningrum and on the basis of that M. Nazaruddin has paid the fine in full to the state treasury. This raises legal uncertainty over the legal protection of a justice collaborator (Thalib et al., 2017).

The absence of legal certainty regarding the status of justice collaborator makes it difficult for law enforcement officers to reveal the main controllers of a criminal act of corruption. In 2019 Indonesia was ranked 85 out of 180 countries in the world according to the list of countries suspected of corruption issued by Transparasi International. Indonesia scored 40 with a 0 (zero) for

the 'cleanest' country and 100 for the most corrupt one. The similar data in 2018 showed that Indonesia scored 38 out of 100 and was ranked 89th out of 180 countries.

Corruption is one of organized crimes that occurs in almost all countries in the world. It has been described by Sanford H. Kadish as an act that benefits a person or party by betraying a trust or to bribe public officials or their subordinates for a particular interest. The criminal act of corruption is said to be one of the extra ordinary crimes in which the process of prosecution and execution of the punishment also requires extra ordinary measures. Several characteristics and characteristics of corruption crimes make it classified as an extra ordinary crime.

According to the records of the Indonesia Corruption Watch (ICW), the value of the potential loss and real wealth of the country due to corruption cases during the first semester of 2020 was Rp. 39.2 trillion (Diansyah & Sari, 2008). The amount was not proportional to the total fine imposed by the panel of judges on the defendant which was only around Rp. 102,985,000 and a replacement money of Rp. 625,080,425,649, US $ 128,200,000 and SGD 2,364,325 or a total of around 2.3 trillion. It is not easy to reveal a criminal act of corruption, because the modus operandi used by the perpetrators is neat and difficult to identify by law enforcement officials. On the other hand, law enforcement officials are fully aware that disclosing the veil of transnational organized crime requires the participation of witnesses. The role of perpetrator witnesses is very important in assisting law enforcement officials to uncover this crime to its roots. The perpetrator's witness testimony can determine the success of disclosing the crime. The testimony by the perpetrator's witness is very influential for the judge when making decisions (Roesli et al., 2017). In fact, in the practice of the criminal justice system, perpetrator witnesses are often unable to provide the best and true testimony during the trial process due to threats, terror, and intimidation against themselves, their families, their assets or their livelihoods. This affects the courage and ability of perpetrator witnesses to provide true testimony based on what they have seen and experienced. Given the strategic position of witnesses in exposing transnational organized crime, several countries have constructed laws that aim to provide protection to witnesses and victims. The aim is to encourage someone who is aware of a crime to be willing to report it to law enforcement officials. The reward is a guarantee of security and safety as well as legal relief from the witness.

In Indonesia "SPB" is regulated in Law no. 31/2014 concerning Amendments to Law no. 13/2006 concerning Protection of Witnesses and Victims, SEMA No. 4/2011, PBMenHum & HAM (M.HH-11.HM.03.02.th.2011), Attorney General of the Republic of Indonesia (PER-045 / A / JA / 12/2011), Chief of Police (No.1 of 2011), KPK RI (KEPB -02 / 01-55 / 12/2011) and the Chairperson of LPSK RI (No. 4 of 2011) concerning Protection for Reporting Parties, Reporting Witnesses and Collaborating Perpetrator Witnesses (Doddema et al., 2020).

"SPB" is explained in article 1 paragraph (2) of Law No. 3/2014 as the Protection of Witnesses and Victims explaining that "SPB" witness is one of the suspects, defendants, or convicted in a corruption case where he is willing to provide true testimony - to law enforcement. His testimony is the key to uncovering a criminal act in the same case.

The Indonesian government has signed new provisions in UNCAC in 2003 which were later ratified by Law no. 7/2006 concerning Ratification of UNCAC 2003 and UNCATOC which have been ratified by Law no. 5/2009 concerning UNCATOC Ratification of "SPB". Article 37 paragraph (2) and paragraph (3) UNCAC year 2003 is one of the references for the emergence of SEMA No. 04/2011.

Article 37 paragraph (2) of UNCAC of 2003 states that each country party to the convention is required to consider the possibility of providing reduced sentences to the perpetrators of certain cases where their testimony is the key to the process of investigation and/or prosecution of crimes agreed in this convention.

SEMA No. 04/2011 numbers 6 and 9 state that "SPB" is one of the subjects of criminal acts in certain cases where witnesses, who are not the main perpetrators of the crime, commit the crimes committed and provide their testimony in the judicial process. Criminal action in certain cases as referred to in SEMA No. 04/2011 is a criminal act of money laundering, narcotics crime, corruption, terrorism, trafficking in persons, and other structured and organized crimes so as to cause serious problems and threats to the security and stability of the condition of society which results in the collapse of the institution and the values of democracy, ethics and justice and jeopardizes the continuation of development and the rule of law.

Supreme Court Circular No. 04/2011 provides guidance for judges when imposing criminal decisions on "SPB" with the following criteria:

1. The witness is the perpetrator or one of the perpetrators of a certain crime who has confessed his criminal act, in which he is not the main perpetrator of the crime and is willing to give his testimony as a witness in the case.
2. The public prosecutor provides an explanation of his charge regarding the witness who has actually testified in order to obtain important information and evidence which can be used to uncover the criminal case.

While various rules and regulations regarding legal protection of an "SPB" have been stipulated, in fact the practice of justice that occurs is as follows:

1. The determination of the status and rights of an "SPB" by law enforcement officers is frequently neglected during judicial proceedings. Information and/or testimony of an "SPB" is not maximized to find the main perpetrator of the particular crime;

2. As an "SPB" who is also a witness to a perpetrator who is involved in a certain crime, his involvement makes his status change from being not the main actor to being one of the main perpetrators. This change in status resulted in the revocation of the "SPB" status so that the right to protection and leniency was also lost;
3. Law enforcers may think that without the "SPB" testimony, the defendant can also testify as a crown witness;
4. The status of "SPB" can be misused to protect the interests of a person or certain party or to obtain benefits thereof;
5. There is a stigma that the opportunity to become "SPB" makes it easy for someone to apply for a reduction or leniency. The courage of the witness "SPB" to give real testimony and become a witness in court is a way for these witnesses to get forgiveness from the judge;
6. There are several technical obstacles in connection with the institutional authorization to determine the status of "SPB" and a clear and transparent procedure system is needed for determining the authority of each law enforcer in determining the status of "SPB";
7. There is no definite procedure in determining the amount of penalty relief given to "SPB".

Based on the description above, the author is interested in taking a closer look at the application of collaborating perpetrator witnesses in Indonesia with the formulation of the problem as follows: What legal effort can justice collaborator take to obtain their rights in the judicial system in Indonesia? And What is the form of legal protection for the status of justice collaborator in the judicial system in Indonesia?

2. RESEARCH METHODS

This is a research based on Juridical Normative, which is a descriptive documentary study. This legal research is conducted by examining library materials and/or secondary data which is also called literature law research. The approach used in this study focuses on the level of horizontal legal synchronization. Therefore the material being studied is the compatibility of written positive law with its practical conditions.

1. Approach

The research approach used is as follows:

a. Statute Approach

The legal approach is the approach taken by reviewing all legal regulations and regulations related to legal issues being addressed.

In the method of legislative approach researchers need to understand the hierarchy and fundamentals in the regulation of legislation.

b. Conceptual Approach

The approach is carried out by referring to the concepts and doctrines of legal science that have been developing so far. By studying these things, ideas will be found that give birth to principles, concepts, and legal definitions related to the problems discussed in this study (Sofyan & Asis, 2014).

c. Case Approach

In the case approach, the ratio decidendi will be examined, i.e. the legal reasons underlying the judge in deciding a court decision that has permanent legal force. In this case the decision to be examined is the decision of the Supreme Court Number 331 PK/Pid.Sus/2019.

2. Legal Source

Sources of legal materials consist of:

a. Primary Legal Materials

As a source of primary legal material for this study, the authors took several sources of law applicable in Indonesia related to SPB, both regarding rights and obligations as well as the determination of SPB status. The primary legal sources used are as follows the 1945 Constitution, the Criminal Code (KUHP), Law No.31/1999 as amended by Law No. 20/2001 concerning the Eradication of Corruption Crime, Law no. 31/2014 concerning Amendments to Law no. 13/2006 concerning Protection of Witnesses and Victims, SEMA No. 4/2011 concerning Treatment of Whistle Blowers and Justice Collaborators in Certain Criminal Acts, PBMenHum & HAM (M.HH-11.HM.03.02.th.2011), Indonesian Attorney General's Office (PER-045 / A / JA / 12/2011) , Chief of Police (No.1 of 2011), KPK RI (KEPB-02 / 01-55 / 12/2011) and Chair of LPSK RI (No. 4 of 2011) concerning Protection for Whistler Blower, Reporting Witnesses and Justice Collaborator of Central Jakarta District Court No. 100/Pid.Sus TPK/2017/PN Jkt.Pst dated 21 December 2017, and Court Decisions and Supreme Court Decisions (Asmuni et al., 2020).

b. Secondary Legal Materials

Books on law, legal journals and scientific research results.

c. Tertiary Legal Materials

Legal Dictionary, KBBI and Legal Encyclopedia.

3. RESULTS AND DISCUSSION

Legality Principle

The idea of legality principle was coined by Montesqueau in 1748 (L'esprit des Lois) and J.J. Rousseau in 1762 (Du Contract Social) to avoid arbitrary actions by the king/ruler against the people at that time. Anselm Von Feuerbach in his book *Lehrbuch des peinlichen Recht* (1801) formulated the legality principle of *"Nullum Delictum, Nulla Poena Sine Praevia Lege Poenali"*

(no crime, without preceding criminal law) which is related to the theory of psychological coercion that he sparked. The three basic legality principles according to Anselm Von Feuerbach in his book *Lehrbuch des Peinlichen Recht* (1801) include:

1. *Nulla poena sine lege* (no crime without law)
2. *Nulla poena sine crimine* (no crime without a criminal act)
3. *Nullum crimen sine poena legali* (there is no criminal act without the previous criminal law)

Legal System in Indonesia

Indonesia adheres to the European Continental legal system which is a legacy of the colonial era. Written law is the basis for the application of the Europe Continental legal system. A crime or violation can be criminalized if there is a statutory regulation or written law that regulates it in advance . The efforts provided by the positive law of Indonesia guarantee the rights and obligations of victims or suspects that the constitution delegates to through legislation (Burns, 2004).

Legal protection

1. According to Satjipto Raharjo, legal protection is a protection given to the community from human rights losses due to the actions of others so that they can enjoy all the rights provided by the law.
2. Legal protection according to Philipus M. Hadjon's opinion is the protection of the dignity of a human being, and recognition of the human rights of a legal subject is based on the legal provisions of arbitrary actions.

Indonesia applies the European Continental legal system. This legal system is based on positive law that adheres to the principle of legality. Julius Stahl as quoted by Azhary mentioned the main elements in the Continental European system as follows:

1. Recognizing and protecting human rights;
2. To protect these human rights, state administration must be based on the trias politic theory (separation);
3. In carrying out its duties, the government is based on law (welmatigh bestuur);
4. If in carrying out its duties based on law the government still violates human rights (government interference in a person's personal life), then a court will resolve it.

Because of the adherence to the European Continental legal system, in carry out law enforcement functions judges in Indonesia based on the prevailing laws and regulations, although in their development judges cannot reject cases that are submitted on the grounds that there is no legal basis but they still refer to the applicable written law. Therefore, the European Continental legal system is very thick with elements of legal certainty (Azhary, 1995).

According to Ade Saptomo, there are 3 approaches used by judges in judging concrete legal matters:

1. Legalistic Approach (Formal)

   This is a model used by judges in solving concrete legal cases whose laws (read: laws) have clearly regulated. Judges seek, sort, and select legal elements in the concrete legal cases referred to and then meet them with the relevant articles in the said law.

2. Interpretative Approach

   In reality, it is possible that the normative rules are incomplete or vague. In an effort to uphold the law with justice and truth, judges must be able to make legal discoveries (rechtsvinding).

3. Anthropological Approach

   Regarding concrete legal cases that have not been regulated by law, judges must find law by exploring, following and living up to the legal values that live in society.

The operation of legal certainty is closely related to legal effectiveness where legal certainty is only guaranteed if the state government has sufficient means to ensure the existing laws and regulations.

Law enforcement

One aspect of legal certainty is law enforcement. The comprehensive role of law enforcement officials greatly determines the occurrence of law enforcement and legal certainty. The component consisting of the Police, Prosecutors, Advocates and Judges has main duties and responsibilities and plays a role according to their respective functions. Good synergy between the components of the law enforcement apparatus is needed to formulate laws that are implemented so that there are no gaps when practicing law inside and outside the court.

The implementation of law based on principles will directly affect the legal system both vertically and horizontally. This means that the duties and powers of law enforcers can provide guarantees for legal certainty for offenders or victims proportionally (vertically). On the other hand, a good implementation of law enforcement can be seen when law enforcers jointly make legal compromises based on their tufoks to carry out norms well (horizontally).

Good vertical and horizontal legal system can avoid overlaps and gaps between law enforcement officials in carrying out written law enforcement and the community as the target of these norms.

Legal protection

Legal protection is defined by Satjipto Raharjo as protection provided to the community from human rights losses due to the actions of others so that they can enjoy all the rights provided

by law. Philipus M. Hadjon defines it as the protection of the dignity of a human being, as well as recognition of the human rights of a legal subject based on the legal provisions of arbitrary actions.

Legal Efforts in Indonesian legal system

Legal effort are efforts given by law to a person or legal entity in certain cases against a judge's decision. This is related to human rights which apply to the rights of a person who is subject to the judge's decision.

There are 2 (two) types of legal effort:

1. Ordinary legal effort (*gewone rechtsmiddelen)*

   It is the right of the defendant and the public prosecutor not to accept the decision of the District Court or the first level *(judex factie).* The purpose is to correct mistakes made by previous agencies, for the unity of the court and as a protection against arbitrary acts by judges or courts (Sofyan & Asis, 2014). This can be in the forms of:

   a. Appeal *(revisi/hoger beroep)*

      Appeal is one of the common legal effort that can be requested by one or both parties in a case against a decision of the District Court. The parties submit an appeal if they are not satisfied with the content of the District Court's decision to the High Court through the District Court where the decision was passed.

   b. Cassation *(cassatie)*

      Cassation is one of the common legal efforts that can be requested by one or both parties in a case against a High Court decision. The parties can file an appeal if they are not satisfied with the content of the High Court's decision to the Supreme Court. Cassation comes from the word "Cassation" with the verb "Casser" meaning to cancel or solve. Cassation trial can be interpreted as breaking or canceling the verdict or decision of the courts, because they are considered to have wrongly applied the law. Although normatively the Supreme Court has the authority to hear cassation cases, it does not automatically and definitely do it, but it depends on the justice seeker or the public prosecutor, whether to file an appeal or not and it depends on other conditions that must be met.

2. Extraordinary Legal Effort *(buiten gewone rechtsmiddelen)*

   a. Examination at the cassation level for legal purposes *(cassatie in het belang van hetrecht)*

      Cassation for the sake of law can only be filed against decisions of district courts and high courts which have permanent legal force, this is different from a judical review, not only limited to district court decisions and/or high court decisions, but also to decisions of the Supreme Court.

   b. Review of court decisions that have permanent legal force *(herziening)*

Judical Review or commonly called *Request Civiel* is reviewing civil decisions that have obtained permanent legal force, because the judge finds out about new things, so that if they are known, the judge's decision will be different.

The difference between ordinary and extraordinary efforts is that in principle ordinary effort can postpone execution (unless a decision is granted the lawsuit and the lawyers are granted) and extraordinary effort do not delay execution.

Collaborative Perpretator Witnesses ("SPB")/ Justice Collaborator

Referring to SEMA No. 4/2011 Collaborative Perpretator Witnesses are the perpetrator or one of the perpetrators of a certain crime, who has confessed his criminal act, not the main perpetrator of the crime. In addition, he is willing to provide important testimony as a witness in the judicial process so that the criminal cases in question can be exposed and his testimony can be used as a basis for disclosing other actors in the criminal case who have a bigger role. It eventually can be used to return the assets / proceeds of the state lost due to a certain crime (Muhammad, 2015).

Corruption Crime

1. According to Article 2 of Law no. 31/1999 concerning the Eradication of TiPiKor, every legal subject who commits acts against the law to enrich himself or other parties or corporations that have the potential to harm state assets can be sentenced to life imprisonment or sentenced to imprisonment of at least 4 years and a maximum of 20 years and a fine minimum of Rp. 200,000,000.00 and a maximum of Rp. 1,000,000,000.00.
2. According to Article 3 of Law no. 31/1999 concerning the Eradication of TiPiKor, any person who aims for the benefit of himself or another party or corporation, uses his / her authority and opportunity, or facilities entrusted to him that can result in the loss or reduction of state assets or the state's economic condition can be sentenced to life imprisonment or criminal imprisonment of at least 1 (one) year and a maximum of 20 (twenty) years and or a minimum fine of Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah). "

This research aims to:

1. To analyze the application of legal effort by justice collaborator who work together to obtain their rights in the judical system in Indonesia;
2. To analyze the legal consequences of the application of legal protection for justice collaborator s in the judical system in Indonesia.

This research is expected to provide the following benefits:

1. Insight in the field of legal science in general, especially criminal law regarding witnesses of justice collaborators in criminal cases of corruption in Indonesia.

2. The results of this study are expected to provide useful information for the public regarding witnesses of justice collaborators in criminal cases of corruption in Indonesia
3. As input and information for students

4. CONCLUSION

The form of Justice Collaborator arrangement in Indonesia is contained in the following laws and regulations:

a) Article 142, and article 168 letters a and b of Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP);
b) Article 3 and article 6 of the Presidential Decree No. 174 of 1999 concerning Remission;
c) Article 5 paragraph (2) Government Regulation Number 71 of 2000 concerning Procedures for Implementing Community Participation and Giving Awards in the Prevention and Eradication of Corruption Crimes;
d) Articles 28, 29, 30, 31, and article 33 of Law Number 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims;
e) Letter of the Supreme Court Number 4 of 2011 concerning the Treatment of Whistle blowers and Justice Collaborators in Certain Criminal Acts.

In addition, justice collaborators are also regulated through a Memorandum of Understanding and Joint Regulations as follows:

a) Memorandum of Understanding between the Witness and Victim Protection Agency and the Republic of Indonesia Prosecutor's Office Number: NK-003 / 1.6 / LPSK / IV / 2011, Number: KEP-069 / A / JA / 04/2011 dated April 20, 2011 concerning Witnesses and Victims
b) Memorandum of Understanding between the Corruption Eradication Commission of the Republic of Indonesia and the Witness and Victim Protection Agency Number: SPJ-12/01/08/2010, Number: KEP-066 / 1.6 / LPSK / 08/2010 dated August 9, 2010 concerning Cooperation in the Implementation of Protection Witnesses or Reporters
c) Memorandum of Understanding between the Financial Transaction Reports and Analysis Center with the Witness and Victim Protection Agency Number: NK-46 / 1.02 / PPATK / 04/2011, Number: NK 002 / 1.6 / LPSK / IV / 2011 dated April 18, 2011 regarding Cooperation in Providing Protection for Reporters, Witnesses and / or Korabn of the Crime of Money Laundering
d) Joint Regulation of MenhumHAM RI, Attorney General RI, Kepolri, KPK RI, LPSK RI Number: M.HH-11HM.03.02.th. 2011 Number: PER-045 / A / JA / 12/2011, Number: 1 of

2011, Number: KEPB-02 / 01-55 / 12/2011 Number: 4 of 2011 Regarding Protection for Reporters, Whistler Blowers and Justice Collaborators.

Protection provided to SPB includes

a) Protection of physical and psychological condition

b) Special handlers

c) Legal protection.

d) Awards

All protections and awards are given to SPB in accordance with certain conditions and limitations. The criminal justice system that currently applies to SPB in criminal acts of corruption is not regulated in detail where there has not been sufficient regulation to become a legal basis for law enforcement officials. Until now the regulation on SPB is only regulated in SEMA No. 4 of 2011 and the Joint Regulation on the treatment of reporters of crime and perpetrator witnesses who collaborate in certain criminal cases. SEMA and PB do not have binding legal force such as law.

Suggestion

Further regulation on SPB in Indonesian laws and regulations is needed. SPB in this case is referred to as the crown witness has been discussed in Article 200 of the Academic Manuscript of the 2012 Criminal Code Bill. Unfortunately, the Draft Law on Criminal Procedure Code has not yet been discussed by the Indonesian Parliament in session period in 2018. Therefore, it takes the seriousness of the government and the DPR in realizing this. This statutory regulation is needed to avoid multiple interpretations in the application of SPB by law enforcement officials in Indonesia. The upcoming SPB may have a greater opportunity given its very strategic role in efforts to uncover organized criminal networks, in this case corruption.

Firmness is needed regarding legal protection of an SPB by law enforcement officials in Indonesia. Law enforcement officials can pay more attention to the existence of SPB and can provide optimal legal, physical and psychological protection so that the existence of SPB in criminal justice can provide a maximum role in uncovering criminal acts and other main actors in organized criminal networks.

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