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Existence of Justice Collaborator in Criminal Action of Corruption: Decree Number 84 / Pid.Sus.TPK / 2018 / Pn. Medan, Indonesia

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Abstract:
The act of corruption is very closely related to the abuse of authority or the influence that exists on the position of someone as an official who deviates from the legal provisions so that legal action has harmed the state finances. In its development corruption is very plural as a form of complicated crime expressed by the increasingly sophisticated modus operandi used and the shrewdness of the perpetrators to eliminate traces. Justice collaborator in the latest developments has received serious attention, because of their key role in opening the dark veil of certain criminal acts that are difficult for law enforcement to reveal. Justice collaborator as a witness of an offender who is willing to help or cooperate with law enforcement. The key role possessed by a justice collaborator is to disclose a criminal act or the occurrence of a crime, so that the return of assets from the proceeds of a criminal act can be reached to the state, provide information to law enforcement officials and provide testimony in the judicial process. Thus, the position of justice collaborator is a witness as well as a suspect who must provide information in the trial, then from that statement can be used as a consideration of the judge in alleviating the sentence to be imposed.

Keywords: *Justice Collaborator, corruption crime*

I. Introduction

In upholding the right law, it is also influenced by public legal awareness. Community participation in this case is intended to empower the community in order to realize law enforcement. Based on their rights, the community is expected to be more passionate about implementing optimal social control of law enforcement. This is important in order to save and normalize national life in accordance with the demands of reform, which requires the same vision, perception and mission of all state administrators including law enforcement. The similarity of vision, perception, and mission, must be in line with the demands of the people's conscience to carry out their duties and functions seriously, full of responsibility carried out effectively, efficiently, free from corruption, collusion and nepotism.

At present the existence of law as lawyers' law, namely law is identical with the law, the legal process must run according to the principles of rules and logic and the law is considered to be able to discipline the society. So that the law becomes an order, an order that is applied to and therefore humans must submit to the law's orders. Since modern law is increasingly based on the dimensions of form that makes it formal and procedural, then the difference between formal justice and justice according to the law has emerged since then. one party and substantial justice on the other. Justice does not only have a formal meaning, but also has a substantial meaning and ability to judge, human consciousness does not only postulate reciprocally in a formal sense, but instinctively it also provides an assessment that determines a conception of justice.

With the existence of 2 (two) types of justice, in practice the law can be used to deviate substantial justice. The use of such law does not mean violating the law, but merely shows that the law can be used for other purposes besides achieving justice. This situation makes everything related to law as if justification can be found, even if for things that do not make sense. The law should be able to capture the aspirations of the people who grow and develop, not only present and not just a static norm that prioritizes certainty and order, but also norms that must be able to dynamize thinking and manipulate people's behavior in achieving their goals (law as a toll of social engineering).

Law is also a renewal in society or a means of community renewal. The law used as a means of renewal can be either law or jurisprudence or a combination of both. However, so that the implementation so that the legislation which should aim as a means of renewal can run properly, it must be formed in accordance with good law, namely the law that lives in the community and reflects the values that live in the community. On the principle that the law is for humans and not vice versa and the law does not exist for itself, but for something wider, namely for human dignity, happiness, prosperity, and human glory. So, there is no engineering or partiality in enforcing the law. Because the purpose of the law is to create justice and prosperity for all the people. Basically, there is a phenomenal change regarding the law which is formulated with sentences from simple to complex and from compartmentalized to one unit. This is what he calls a holistic view in science (law). The holistic view provides a visionary awareness that something in a certain order has interrelated

parts both with other parts or with the whole. Progressive law is very close to some legal theories that have preceded it, among others:

- The concept of responsive law (responsive law) which is always associated with goals beyond the textual narrative of the law itself.
- Legal Realism, the only legal source is not only the holder of state power, but also legal implementers, especially judges. It is also stated that the form of law is no longer limited to law, but also includes judges' decisions and actions taken and decided by law enforcers.
- Freirechtslehre, a legal rule must not be viewed by a judge as something merely logical, but must be judged according to its purpose.
- Critical Legal Studies, both of which contain the substance of criticism of the establishment of the flow in liberal law that is formalistic and procedural, as well as a sense of dissatisfaction with the implementation of applicable law.

1.1. Understanding of Justice Collaboration

Circular Letter of the Supreme Court (SEMA) No 4 of 2011 concerning Treatment for Whistleblowers and Justice Collaborators. At the SEMA, the Justice Collaborator is interpreted as a certain criminal offender, but not the main actor, who acknowledges his actions and is willing to be a witness in the judicial process.

Becoming a Justice collaborator has conditions, among others, the actor is not the main actor in his case, the person concerned returns the assets obtained, and the information provided must be clear and have a correlation which is deemed appropriate to be followed up. These three general things do not invite problems. For the first, if the "Fulan" is accepted as a justice collector, then indirectly "convicted" that the Fulan is not the main actor. Second, the Fulan returns the assets acquired; this means that there has been legal clarification on which assets are obtained from proceeds of crime and which are not. This is not an easy thing to do because the legal system in Indonesia has not or does not adhere to a specific principle that supports criminal proceedings, especially corruption.

1.2. Difference between Whistle Blower and Justice Collaborator

The definition of Whistleblower is often mixed with justice collaborators, even though there are some writings that contain a whistleblower as just collaborators. Indeed, at a glance, the whistleblowers and collaborators only collaborate with law enforcement officials in providing important information on the legal cases revealed.

Denny Indrayana, Deputy Minister of Law and Human Rights in a discussion at the Auditorium of the Corruption Eradication Commission on May 16, 2012 said that the whistleblower was not involved in the criminal case he revealed. Whereas justice collaborator is part of the perpetrators or groups of crimes that occur (kompas.com, Different whistleblower and justice collaborator, May 17, 2012, accessed on September 19, 2012. Denny explained that nuclear engineering had developed in relation to the designation of a whistleblower against Agus Condro, a former member of the 1999 DPRI -2004 involved in a travel check case in the election of Bank Indonesia Senior Deputy President Miranda Gultom, according to Denny Agus Condro, Justice Collaborator.

In line with Denny Indrayana, the Chairperson of LPSK Abdul Haris Semendawai explained that the whistleblower was not part of the crime perpetrators expressed, but if he was part of the perpetrators expressed, he was a justice collaborator. Abdul Harman explained that Susno Duadji was an example of a whistleblower, although Susno Duadji was a perpetrator of a crime but in a case that was different from the facts he revealed. According to Abdul Haris the investigators paid little attention to the timing of ensnaring Susno Duadji in the Arwana and Pilkada in West Java, because Susno Duadji's determination to be a suspect could silence the presence of other lawyers because the investigation of Susno Duadji's case could be suspected of being retaliated by the perpetrators reported by Susno Duadji Even though Susno Duadji was enforced as Justice Collaborator because his law was commuted by the Judge to 3.5 years, which was originally sued 7 years by the public prosecutor (Results of the author's interview with the Chairperson of LPSK Abdul Haris Semendawai at LPSK Jakarta Office, at the Independence Pioneer Building jl. No Proclamation .6 on January 16, 2012 quoted from Usu Law Journal Vol II No. 2 November 2013).

Looking at both of these opinions, then when looking at the history is very contrary. The types of crimes revealed by the disclosers are organized crimes such as corruption cases that occur at this time involving elements of several institutions such as the legislature and executive and even the judiciary, to find a whistleblower who is not involved in knowing for sure and has strong evidence to disclose very difficult. Organized crime which is classified as extra ordinary crimes is a crime that is very difficult to prove so that it requires an insider involved.

In SEMA No.4 of 2011 concerning the Treatment of Whistleblowers and witnesses of the collaborating (justice collaborator). In this SEMA it is clearly stated that the Whistleblower is as a reporter of a certain criminal offender, meaning the whistleblower is part of the perpetrator, but not the main actor who acknowledges his actions and is willing to be a witness in the judicial process.

In contrast to the Justice Collaborator, a justice collaborator is actually a person who was first made a corruption suspect but he wants to work together to provide information to investigators about the other actors involved and even reveal the main perpetrators in the hope of obtaining compensation for punishment. An offer to be a justice collaborator can be carried out by an investigator or suspect. While the whistleblower with his own awareness to divulge information to the investigator whether he was involved in the case or was not involved and his status was not as a suspect.

In national law, Justice collaborator is regulated in Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Law Number 31 of 2014 (Amendment to Law Number 13 of 2006) concerning Witness and Victim Protection,

Circular of the Supreme Court (SEMA) No. 04 of 2011, Joint Regulation of the Minister of Law and Human Rights, Attorney General, National Police Chief, KPK, and LPSK concerning Protection of Reporters, Reporting Witnesses, and Collaborating Witnesses.

The legal sources mentioned above still do not provide a proportional arrangement, so the existence of a justice collaborator can be responded differently by law enforcement. For example, in the Supreme Court Circular No. 4 of 2011 concerning Treatment for Reporting Officers of Crime (Wistle blowers) and Witnesses of Cooperating Actors (Justice Collaborators) in Certain Crime Cases. The birth of the SEMA above is based on consideration: that in certain serious criminal acts such as terrorism, corruption, narcotics, money laundering, criminal acts of trafficking in persons, it has caused serious disturbances to the community, so special treatment must be given to everyone who reports, knows or find a crime that helps law enforcers to disclose it. Therefore, to deal with the aforementioned crime, the parties involved in the crime need to get legal protection and special treatment

Corruption as a criminal offense with the status of extraordinary crime, in finding the perpetrator and collecting evidence, must also be carried out with extra caution and by tracing networks that are so complicated, because the perpetrators of corruption are people who have more positions or knowledge (white collarcrime / intellectual), so that the perpetrator understands very well to eliminate evidence to cover up acts and networks of corrupt criminal acts so that in this case including and not limited to information or data that is spoken, sent, received, or stored either normally or electronically or optically , investigators tried to uncover the network by utilizing actors who could be invited to work together to uncover other actors who were more instrumental in the occurrence of the corruption act.

In connection with the aforementioned matter, it may be noted again the importance of the "crown witness" (kroongetuide) in the settlement of criminal acts which are difficult to prove due to the lack of evidence that can be revealed. So, by looking at the role and purpose of the crown witnesses it can be concluded that there are similarities with the actors who collaborate to uncover case events (just collaborators), even though there are principle differences, including the presence of crown witnesses due to lack of evidence to ensnare or prove someone to be a perpetrator
Crime (especially inclusion), while in justice collaborator, the perpetrator has been found with two valid evidences, while the role of justice collaborator is only to reveal other actors suspected of being involved in the corruption act, the initiative to provide information in the crown witness originating from investigators who find it difficult to uncover a crime because of lack of evidence so that investigators take one of the perpetrators who have a minimal role to be used as witnesses against other witnesses by splitting while in justice collaborators the initiative to provide information comes from self the perpetrator who with his awareness acknowledges his actions and then assists the investigator to reveal the involvement of other actors in the criminal act network. Another difference is that the "crown witness" is protected by not continuing the case, while just collaborators are protected and given awards in the form of lighter prosecution and punishment. In the era of development, the crown witness as early as its history, in law enforcement in Indonesia today, is only a term to distinguish witnesses who witness, hear and who experience crimes themselves with witnesses who are actually suspects in disciplinary criminal cases, because the lack of witnesses that can be used as a basis for ensnaring participants. So, the meaning of the crown witness has changed from the history of its existence at first. In connection with the discussion, it is necessary to put forward some International and National documents which regulate justice collaborator, namely:

- United Nations Convention Against Corruption / UNCAC (ratified based on Law No. 7 of 2006 concerning the UN Anti-Corruption Convention). Article 37 Paragraph (2) states that: "Each participating country must consider, giving a possibility in certain cases to reduce the punishment of an offender who provides substantial cooperation in the investigation or prosecution of a crime applied in this convention".
- Article 37 Paragraph (3) Every country must consider the possibility in accordance with the basic principles of its national law to provide immunity from prosecution for persons who provide substantial cooperation in the investigation or prosecution of a criminal offense established in this convention.
- United Nations Convention Against Transnational Organized Crime / UNCATOC (ratified under Law No. 5 of 2009 concerning the United Nations Convention on Transnational Organized Crime)
- Article 26 Paragraph (2) states that: "Every state party must consider opening the possibility in the right circumstances, reducing penalties for the accused who provide meaningful cooperation in the investigation or prosecution of crimes covered by the convention".
- Article 26 Paragraph (3) states that: "Every state party shall consider opening the possibility, in accordance with the basic principles of its national law, the granting of immunity to prosecution of a person who provides employment which means in the investigation or prosecution of a crime covered by this convention".
- Law Number 13 of 2006 concerning Protection of Witnesses and Victims.
- Article 10 (2) states that: "A witness who is also a suspect in the same case cannot be acquitted of criminal charges if it turns out that he has been proven legally and convincingly guilty, but his testimony can be used as a consideration by the judge in alleviating the sentence".
- Law No. 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

Article 10A Paragraph (1) states that: "Witnesses of perpetrators can be given special treatment in the process of examination and appreciation for the testimony given.
Article 10A Paragraph (3) Appreciation for the testimony as referred to in Paragraph (1) is in the form of: Penalty relief; or Conditional release, additional remission, and other prisoner rights in accordance with the provisions of legislation for witnesses of convicted perpetrators. Article 10 A Paragraph (4) states that: "To obtain an award in the form of waiver

From the above regulations, it can be said that the provision provides criteria for justice collaborator and the provision of waiver against perpetrators who cooperate in uncovering criminal acts which they themselves are involved in. In judicial practice the determination of the witness of the perpetrator who cooperated was carried out by the investigator at the stage of the investigation, and the public prosecutor in his claim by asking the panel of judges to consider and assign the defendant a lighter witness to the perpetrator. Determination of justice collaborator witnesses must be done wisely, so that the perpetrators who are intellectual actors of corruption are treated in the form of sentence relief because they are willing to become a justice collaborator, while the defendants are only intermediaries or only get treatment in the form of punishment for being willing to become a justice collaborator, while the defendant who is only an intermediary or only gets a small portion of the crime is punished more severely than the main perpetrator himself.

2. Case of Position and Analysis

2.1. Position Case

2.1.1. Court Decision

Based on the Decision of the Corruption Court at the Medan District Court Number 84 / Pid.Sus.TPK / 2018 / PNMdn, dated December 13, 2018, it can be seen that the Medan District Court:

- Declare Defendant EFENDY SAHPUTRA aka ASIONG has been proven legally and convincingly according to the law guilty of "committing a criminal act of corruption" as in the first indictment violating Article 5 paragraph (1) letter a of the Republic of Indonesia Law Number 31 of 1999 concerning Eradication of Corruption as has been amended by Law Number 20 Year 2001 concerning Amendment to Republic of Indonesia Law Number 31 of 1999 concerning Eradication of Corruption Crime in Article 64 Paragraph (1) of the Criminal Code.
- Imposing a criminal sentence against Defendant EFENDY SAHPUTRA aka ASIONG in the form of imprisonment for 4 (four) years, reduced as long as the Defendant is detained, and a fine of Rp. 100,000,000 (one hundred million rupiahs) for 2 (two) months imprisonment, with the order that the defendant is in custody.

2.1.2. Prosecutor / Public Prosecution Claims

That Defendant EFENDY SAHPUTRA aka ASIONG, in January 2016, February 2016 and October 2016, in March 2017 and December 2017, in January 2018, February 2018, March 2018, April 2018, June 2018 and July 2018 or in January 2016 up to July 2018 or at least at certain times in 2016 to 2018, located at Bank Sumut Rantauprapat Branch and Labuhan Batu Regent Service House Jl. WR. Supratman No.44 Kec. Rantau Utara Labuhan Batu North Sumatra Rantauprapat or at least somewhere that is still included in the jurisdiction of the Corruption Court in the Medan District Court that has the authority to examine, hear and decide on this case, has done a number of actions that have to be seen as one continuous action, giving or promising something, namely in 2016 giving money amounting to Rp. 10,382,050,000.00 (ten billion three hundred eighty million fifty thousand rupiahs), in 2017 giving money in the amount of Rp.11,000,000,000.00 (eleven billion rupiah) and in 2018 gave a total of Rp.17,500,000,000.00 (seventeen billion five hundred million rupiah) so that a total of Rp.38,882,050,000.00 (thirty eight billion eight hundred eighty two million five tens of thousands of rupiahs) and sums of SGD218,000 (two hundred eighteen thousand Singapore dollars), to Civil Servants or Penye The state administration is to PANGONAL HARAHAP as the Regent of Labuhan Batu, with the intention that the Civil Servants or State Administrators do or do nothing in their position so that the PANGONAL HARAHAP as Regent of Labuhan Batu for the period 2016-2021 is in accordance with the Decree of the Minister of Home Affairs Republic of Indonesia No.131.12 -794 of 2016 provides several work packages in Fiscal Year 2016, 2017 and 2018 in Labuhan Batu Regency, which are contrary to their obligations which are contrary to the obligations of PANGONAL HARAHAP as Regent of Labuhan Batu as referred to in Article 5 number 4 and 6 of Republic of Indonesia Law Number 28 of 1999 concerning the Implementation of a Clean and Free Country and Corruption, Collusion and Nepotism Article 76 paragraph (1) letter e concerning the Republic of Indonesia Law Number 9 of 2015 concerning the Second Amendment to the Republic of Indonesia Law Number 23 Year 2014 concerning Regional Government.

2.2. Case Analysis

2.2.1. Affirmation of Judice Collaborator in Consideration

In some considerations the decision of the Corruption Criminal Court in the Class I A District Court Number 84 / Pid.Sus.TPK / 2018 / PNMdn can be stated on December 13, 2018, as follows:

Considering whereas it turns out that outside of this matter the Defendant and his Legal Counsel Team have submitted an application so that the defendant can be determined as a justice collaborator.

Considering that according to SEMA No. 4 of 2011 stated that "justice collaborator" is defined as a certain criminal offender, but not the main actor, who acknowledges his actions and is willing to be a witness in the judicial process. To be called a "justice collaborator", the prosecutor in his claim must also state that the person concerned has provided very significant information and evidence.

Considering that also from the stages of detention that the defendant underwent starting from the investigation process where before the extension of detention was finished by the Public Prosecutor where the investigation process had been completed where the investigator no longer extended detention to the District Court Chairperson for 2 X 30 days according to Article 29 KUHAP, while in a corruption case for the same case experienced by Dr. Ahmad Rivai, Mkes, SKM,

which is suspected of receiving bribes of Rp. 6,750,000, - in accordance with Article 12 sub a Corruption Act No. 11 of 1999 as amended and supplemented by Law No. 20 In 2001 the investigation process was long until the Regional Police Investigator in Medan requested an extension of 2 x 30 days, so that from the fact the defendant cooperatively greatly assisted the Investigation of other cases that were related, so that the defendant's request and Defendant's Legal Advisor Team this can be granted by setting the defendant to be a "justice collaborator."

From the consideration of the decision it can be seen that the defendant was designated as Justice Collaborator. This indicates that the defendant is a witness, who is also a perpetrator, but wants to cooperate with law enforcement in order to dismantle a case and even return assets resulting from corruption if the asset is on him.

Determine someone as Justice Collaborator, according to SEMA No. 4 of 2011, there are several guidelines, namely:

- The person concerned is one of the specific criminal offenders as referred to in this SEMA, acknowledges the crime he committed is not the main actor in the crime and provides information as a witness in the judicial process.
- The public prosecutor in his claim stated that the person concerned had provided very significant information and evidence so that the investigator and / or public prosecutor could effectively disclose the intended crime, reveal other actors who had a greater role and / or restore assets / proceeds of a crime.
- For this assistance, the witness of the perpetrator who cooperates as referred to above, the judge in determining the criminal to be dropped can consider matters of criminal imposition as follows:
- Dropping criminal special conditional trials, and / or
- Imposing a criminal in the form of the lightest imprisonment among other defendants proven guilty in the case
- Guidelines for judges in imposing penalties on justice collaborator with several criteria:
- The person concerned is a particular criminal offender, acknowledges his crime, is not the main actor and provides information as a witness in the case;
- The Public Prosecutor has explained in his claim that the person concerned has provided significant information and evidence so that he can reveal the intended crime.

It can be said that it is said that it has been established as a Justice collaborator as a witness of perpetrators who work together, participate in criminal acts of corruption in justice collaborator. Court Judges need to prove the wealth of justice collaborator as a determinant of the verdict by the judge. The Justice collaborator has been sentenced to a light sentence and even "Justice collaborator" is seen as justification and forgiveness as well as things that are burdensome as judges' consideration in the verdict regarding the justification and forgiveness reasons there are several different opinions. According to M. Yahya Harahap, the provisions contained in Article 191 paragraph (1) of the Criminal Procedure Code can be expanded to mean that the terms of the verdict are related to matters of eliminating the conviction of the accused from conviction is justification and forgiveness. Both are conditions to free the defendant from punishment. The reason is because his soul is disabled in growth or his soul is disrupted due to illness as stipulated in Article 44 of the Criminal Code. Criminal acts carried out by people who are not old enough as in Article 45 of the Criminal Code. In addition, it is also due to the overmatch both in the forced force of the mind and physical force as stipulated in Article 48 of the Criminal Code. Forced self-defense according to Article 49 of the Criminal Code and Article 50 of the Criminal Code, because the existence of a law order can also be used as a basis for justification and forgiveness. On the other hand, Andi Hamzah has another opinion, that between the justifying and forgiving reasons has different consequences in criminal procedural law. The reason for negating the law-breaking element in an act, so that it must be severed freely. Whereas forgiving reasons exclude errors, so the verdict is separated from all demands. According to the author there are still many interpretations and debates of the norm in practice when the judge gives a verdict free of all demands. With this, according to the author, there are still many interpretations and debates on norms in practice when the judge gives a verdict.

In my opinion this is important to emphasize to ensure that everyone in the situation is considered individually, because this is closely related to the juridical and constitutional rights of each person that must be properly considered and protected. This is also important because the character and intentions and actions of a person in the occurrence of a crime are relatively different, which can be seen in the examination at the trial which is the facts of the trial.

It needs to be carefully understood, so that the purpose of the law can be achieved properly. The purpose of the law is to create order and order, peace and justice. The law aims to protect humans, prevent arbitrary acts and violations of rights, as well as efforts to create conditions and encourage people to always humanize themselves continuously. In addition to realizing order and justice, the duty of law is to create, order and ensure legal certainty.

Legal certainty is the will of every person, how the law must apply or be applied in a concrete event. Legal certainty means that everyone can demand that the law be implemented and that demand must be fulfilled, and that any violation of the law will be dealt with and subject to legal sanctions.

As is known that the constitutional system creates legal order, which guarantees equality before the law, guarantees the upholding of law, and guarantees the achievement of legal objectives. The legal order (rechtsorde) is intended as a state power based on the law desired by law, and the state of society in accordance with applicable law. Legal order is created if: a) a product of legislation does not conflict with each other, both vertically and horizontally, b) the behavior of the executor of state power and community members in accordance with applicable legal rules.

Public order is a state of organizing human life as a life together. A general orderly state implies a general accepted order as a minimum appropriateness, so that life together does not turn into anarchy. Public order is often discussed using different terms such as "state of peace," "legal certainty." He needs something that is able to result in the condition of society in general is orderly and not vice versa; legal rules are actually the objective interests of all parties in society. This means that if left unchecked, the general state of society may be disorderly. Justice has not been achieved with the

existence of order, because justice is more than just order. Public order is actually also a manifestation of a peaceful state guaranteed by collective security, that is, a human order feels collectively secure. Freedom and personal responsibility regarding the law.

Regarding the existence of Justice Collaborator Law No. 13 of 2006 was revised by Law No. 31 of 2014 especially in Article 10 of Law No. 31 of 2014 concerning Amendment to Law No. 13 of 2006 the Witness and Victim Protection Agency, the formulation of the norms is as follows:

- Witnesses, Victims and Actors and / or Reporting Witnesses cannot be prosecuted legally, both criminal and civil, for the testimony of the funds, knowing which reports will be, are or have been given, unless the testimony or report is given is not in good faith.
- In the event that there is a legal claim against the Witness, Victim, Acting Witness, and / or Reporter for the testimony and / or report that will, is or has been given, the lawsuits must be postponed until the case he reports or gives testimony has been decided by the court and obtained permanent legal force.
- Then in Article 10 (A)
- Witnesses Actors can be given special handling in the examination process and appreciation for the testimony given.
- Special handling as referred to in paragraph (1) in the form of:
- Separation of places of detention or places of criminal conduct between Acting Witnesses and suspects, defendants, and / or narrators who are exposed to criminal acts;
- Separation of checks between the files of the Acting Witness and the files of the suspect and the defendant in the process of investigation, and prosecution of the criminal offenses disclosed and / or:
- Give a testimony before the court without facing the defendant who was revealed by the crime.
- Award for testimony as referred to in paragraph (1) in the form of:
- Criminal drop relief; or
- Conditional release, additional remission and other prisoners' rights in accordance with the provisions of laws and regulations for Acting Witnesses who are inmates.

In order to obtain an award in the form of a criminal award as referred to in paragraph (3) letter a, LPSK provides a written recommendation to the public prosecutor to be included in his claim to the judge. and to obtain awards in the form of parole, additional remission and other prisoner rights as referred to in paragraph (3) letter b, LPSK provides recommendations in writing to the minister who administers government affairs in the legal field. Although the justice collaborator norms are regulated in the Law No. 31 of 2014, but weaknesses remain in its implementation. The first weakness is to submit a request for a justice collaborator to the LPSK, so that referring to the above, the arrangement is still not clearly regulated. In such conditions, the question arises: If the suspect is detained by the KPK, is the application as a justice collaborator submitted to the KPK or LPSK or to both? In practice, there are three answers to the above questions. First; petition as a justice collaborator was submitted to the KPK. Second, to get special treatment, it is very dependent on the agency that handles the suspect / defendant, and the assessment of whether the person concerned can be categorized as just a collaborator or cannot, the decision is determined by the agency concerned. Thus, the assessment of the provisions of justice collaborator becomes very subjective, and LPSK has no power to determine whether a person is eligible to be a justice collaborator or not eligible. Third, the award for obtaining a sentence of relief is not binding on the judge. A letter of recommendation issued by LPSK against the court may not necessarily be used as a basis to alleviate the punishment of a justice collaborator. Likewise, with the recommendation of the LPSK to obtain additional remissions, conditional release to justice collaborator does not necessarily become a consideration in its implementation.

The important thing and in my opinion must be considered because to be a whistleblower and justice collaborator is not an easy and capable choice for everyone. Therefore, someone who wants to uncover a crime is certainly a person who is able to control fear and dare to take risks as a leak / disassembler. In practice many witnesses and victims of criminal acts are vulnerable to terror and intimidation. The risks faced whistleblowers and justice collaborator can be:

1) Internal Risk

a) The Whistleblower and justice collaborator will be opposed by their own colleagues because they are considered as opening disgrace.

b) Whistelblower and justice collaborator and their families will be threatened both physically and psychologically.

c) Whistleblowers and justice collaborators will be eliminated from their careers and livelihoods (dismissal from office, transfer, or demotion etc.)

2) External Risks

a) Whistleblowers and justice collaborators will be faced with the complexity and complexity of the legal process that must be passed.

b) The Whistleblower and justice collaborator will get legal risk as their legal status is determined as a suspect, the defendant, even forced attempts to arrest and detain, are prosecuted and tried and sentenced to sentence along with compensation and fines that weigh the same as the other perpetrators.

c) The Whistleblower and just collaborator will be threatened with a defamation lawsuit from the suspect (reported back). The Whistleblower will also get retaliation by the perpetrator by reporting other cases that may have been carried out by the whistleblower.

On the basis of this fact that in conditions of rampant corruption in all sectors and the atmosphere of corruption eradication are faced with a network of technologies that are so difficult to reach and increasingly sophisticated and

difficult to prove, the presence of a whistleblower and justice collaborator is an ofan age agent in efforts to eliminate corruption in Indonesia.

The supremacy of the law implies supremacy of values, the supremacy of law implies that in the life of the nation the substantial values that inspire the law must be upheld and become the demands of the community, among others: "upholding the values of justice, truth, honesty, and trust among others"; upholding civilized human values and respect / protection of human rights; absence of abuse of power / authority; the absence of favoritism and corruption, collusion and nepotism practices. The values of supremacy of law should be realized in the entire order of life in the society / state, meaning not only manifested in legal justice, but also social justice, political justice, and justice in all other areas of life. There is no abuse of political power, misuse of economic power and so on; and there is no practice of favoritism (favoritism) in all areas of life.

2.3. Attachment of the Judge by Determination as Justice Collaborator by Investigator or Public Prosecutor

The judge in examining and deciding the case faced a fact that the written law did not always solve the problem at hand. In fact, often the judge must find the law itself (Rechtsvinding), and / or create (rechts schepping) to complete the existing law, in deciding a case. The judge of initiative itself must find the law, because the judge may not reject the case on the grounds that the law does not exist, is incomplete, or the law is vague. Judges must always equip themselves with legal science, legal theory, and legal philosophy. The judge may not read the law only normatively (visible) only. Judges are required to be able to see the law more deeply, more broadly, and further ahead. The judge must be able to see the things behind the written provisions, what thoughts are there, and how the sense of justice and truth community about that. In the process of creating the law (recht cepping) it immediately happens. The stages that must be passed can go through the process of legal development (rechtbouvening), the process of legal formation (rechtvorming) and the process of legal discovery (rechtvinding). making a verdict that will be given to the perpetrators of corruption. The analogy and nature of the discretion of judges in the meaning and interpretation of the law if widely used in granting sanctions against perpetrators would endanger the court system in Indonesia. These judges and law enforcement officers have not been tested for their professionalism and independence in every sentence given. Analogy and interpretation are usually based on the existence of a legal vacuum and written rules are still multiple interpretations both in terms of legal norms and principles used. With the existence of arbitrary analogies and interpretations it will not achieve legal certainty. Strict sanctions and legal certainty are the main heart in law enforcement in Indonesia when in verdicts to be given by judges. According to the author, the use of analogies and interpretations must have special restrictions that lead to legal certainty rather than legal breakthroughs in search of justice. Exalted justice in practice is only used as a gap in lobbying and legal trade. The meaning of "state loss" must be used as a parameter in making the basis of a judge's decision. The meaning is given that the aspects of crime that have been caused have involved the public and the people's interests at large. Judges must be responsive and smart in understanding the norms and principles of this law, because they are abstract and subtle in nature, difficult to detect. In the next process, there should be no legal narrowing (rechtvervijning). The highest peak must reach at the stage of legal unification (rechtverfusing). The meaning of this union begins in a philosophical context in the constitution, but the author does not mean it in such a narrow sense. Unification of law is a form of creation of legal certainty that is wrapped in a sense of justice and expediency. Every word has meaning if it has been associated with its legal norms and principles. Unification that is used must be able to elaborate all the elements that exist and must not be left behind.

In judicial practice, judges in assessing whether a person who is prosecuted in his claim is categorized as a justice collaborator adheres to the Circular Letter of the Republic of Indonesia Supreme Court (SEMARI) Number 4 of 2011 concerning the Treatment of whistleblowers and Witnesses who cooperate (justice collaborators) in certain criminal cases. SEMA No. 4 of 2011 provides a guideline to determine someone as a witness of the perpetrator who cooperates (just collaborator) as follows:

- The person concerned is one of the specific criminal offenders as referred to in this SEMA, acknowledging the crime he committed, not the main actor in the crime and providing information as witness in the judicial process.
- The public prosecutor in his claim stated that the person concerned had provided very significant information and evidence so that the investigator and / or public prosecutor could effectively disclose the criminal offense, reveal other actors who had a greater role and / or restore the assets of a result criminal act.

This is because the SEMA is a guide for the judges in carrying out their duties if a provision has not been regulated in the existing legislation, so the Supreme Court considers it necessary to find the basis for its solution, so that there is a unity of opinion in dealing with the same problem. The attention of the Supreme Court to reporters of criminal offenses and witnesses of perpetrators is based on efforts to foster public participation in uncovering criminal acts by providing legal protection and special treatment to everyone who knows, and / or finds something that can help law enforcement officials to uncover and deal with the intended crime effectively. On the basis of these considerations, the Supreme Court requested the judges to be able to provide special treatment by, among other things, providing criminal relief and / or other forms of protection against persons who could be categorized as reporting criminal acts and witnesses of collaborating perpetrators.

As some of the above rules, it can be said that the assignment of status as a witness who cooperates (just collaborator), is an investigator in conducting investigations and public prosecutors in his demands, so another problem in judicial practice is whether just judges can grant the status of justice collaborator which has been determined by investigators and public prosecutors in their demands.

In determining justice collaborator, there appear to be different views or indicators which are used as benchmarks for determining who can be declared a justice collaborator between investigators and prosecutors and judges who examine cases. Investigators and prosecutors tend to hold witnesses to the perpetrators who can provide very significant information and evidence so that investigators and / or public prosecutors can effectively uncover criminal offenses, and uncover other actors who have a greater role and / or restore assets the outcome of a crime. While the Judge adheres to the provision that justice collaborators are not the main perpetrators. The two indicators are indicators that have been outlined in SEMA No.4 of 2011, so that in addressing the different indicators used as the reason for determining the justice collaborator, judges should wisely give consideration in assessing whether the main actor can be made as a justice collaborator or not, so that the decision dropped will be more likely to give justice to other actors who are not the main actors.

With the differences in the assessment, the KPK considered it would be a bad impact, because there would be reluctance for the perpetrators to work together to dismantle the network of corruption cases that occurred, because they thought there were no awards given by investigators or prosecutors. This is because the KPK considers that in setting someone an actor as a collaborator (justice collaborator) the KPK has tried selectively by referring to the perpetrators who have cooperated in uncovering cases involving themselves, by providing significant evidence, and have returned the money resulting from corruption, so The KPK can ensnare other actors involved in the corruption.

Based on KPK data in 2016 there were 21 (twenty-one) requests for corruption suspects who requested justice collaborator status, for which 2 (two) were granted, 10 (ten) applications were rejected, and 9 (nine) applications were still being processed. By looking at these facts, it can be said that the KPK is quite selective in granting whether a person can be determined as a witness of a perpetrator who cooperates or not, by using criteria that can be accounted for in accordance with the objectives of implementing the collaborating actor.

As previously discussed, the Circular of the Supreme Court (SEMA) Number 4 of 2011 has provided a limitation as a condition for the perpetrators who cooperate in uncovering criminal acts, cannot be given to "the main perpetrators of criminal acts". The main perpetrator in a criminal act can be interpreted as an intellectual actor from the occurrence of a criminal act, so that an indicator can be made whether a perpetrator can be used as a witness of a collaborating actor or not by assessing how important or how the role of the perpetrator in a criminal act. As an example of a liaison in a bribery, it does not mean that the main perpetrator is ignored, because it may be an initiative to ask for bribes or come from the intermediary, so the bribe recipient who is in fact the Commitment Making Officer (PPK), for example, cannot accept bribery, because it could be precisely the partner party who took the initiative to bribe, thus the assessment as a witness of the collaborating (justice collaborator) perpetrator must be done selectively and wisely, so that the main perpetrator gets a lighter sentence than the perpetrator who only receives part of the corrupt action. It is also not to "thief thieves" in hopes of obtaining a sentence of relief because it has become a perpetrator who cooperates in disclosing criminal acts. In this case the judge is not bound to the determination of investigators and prosecutors in his demands regarding justice collaborator, because the judge adheres to the consideration provide penalties that are in accordance with the sense of justice of the community not in the sense of justice of the collaborating actors.

In Article 10 paragraph (1) of Act No. 13 of 2006 in conjunction with Law No. 31 of 2014 concerning Witness and Victim Protection states that Witnesses, Victims, Acting Witnesses, and / or Reporters cannot be prosecuted legally, both criminal and civil, for testimony and / or reports that they will, are or have been given, except testimony or reports this is given not in good faith. (2) In the event that there is a legal claim against the Witness, Victim, Acting Witness, and / or Reporter on the testimony and / or report that will, is, or has been given, the legal claim must be postponed until the case that he reports or gives testimony has decided by the court and obtain permanent legal force. This is what according to the author can be used as a consideration for judges in giving verdicts to be handed down to a justice collaborator.

It needs to be stressed that law enforcers enforce the law properly and are not wrong in implementing the law, which in this case places the rule of law that is no longer valid as a basis for legal considerations. Invalid Legal Provisions cannot be used as a basis by law enforcers in this case the Prosecutor / Public Prosecutor is the legal basis for prosecuting or certain parties to fulfill their interests (and in my opinion this action is categorized as an act of smuggling of law). In the act of smuggling law, the law is used to fulfill personal or vested interests. Law Enforcement Behavior, Starting from Investigation, Prosecution, Trial, should be educational, not legal smuggling.

It needs to be emphasized that the connection with law enforcement, the prevailing legal order in a society, is basically the embodiment of the legal ideals embraced in the community concerned into a range of positive legal rules, legal institutions and processes (behavior of government bureaucracies, law enforcers and citizens) means that the law that applies in the community must not conflict with the values that live in society.

The quality of development and law enforcement is related to the central issue demanded by the people today, namely the protection of human rights, the upholding of the values of truth, honesty, justice, and trust between people; there is no abuse of power / authority; clean from the practice of pavorism (favoritism), corruption, collusion and nepotism and the justice mafia; the realization of an independent judicial power / law enforcement and the establishment of a code of ethics / professional code; the existence of a clean and authoritative government. Law Enforcement must start from the judicial, social and propriety postulates. So, law enforcement that contains CIVILIZATION Values and HUMANITY and DECISION. Achieving TRUTH (truth) and JUSTICE (justice) then every law enforcement which is based on the values of civilization and humanity and propriety, must approach truth and justice. It should also be understood that Law Enforcement is not solely for enforcing laws and regulations, but must be aimed at enforcing truth and justice. The reason that something is WETMATIG (legal) is not necessarily RECHTVAARDIG (justice) Something that RECHTMATIG (lawful) is not necessarily

RECHTVAARDIG (justice). But something that is in accordance with the values of CIVILIZATION and HUMANITY, must contain the values of TRUTH and JUSTICE.

It should also be understood that the supremacy of law is the supremacy of values being the demands of the community, among others, namely the upholding of the values of justice, truth, honesty, and trust between people "; upholding civilized human values and respect / protection of human rights; absence of abuse of power / authority; the absence of favoritism and corruption, collusion and nepotism practices.

This is where carefulness and precision from law enforcers are needed so that truth and justice are truly upheld by enforcing the law correctly. For truth and justice to be upright, law enforcers must have subtlety conscience that is responsive to sense of justice, thick sense of responsibility, being able to implement services rather than punish. Law enforcers should understand that the law is based on human values. Law based on human values reflects norms that respect human dignity and recognize human rights. Norms that contain noble values that uphold human dignity and guarantee human rights, continue to develop in accordance with the demands of the human conscience.

If law enforcers ignore moral principles and noble human character, it means not to be clean in terms of morals or ethics. It needs to be understood that in principle that law in its entirety (totality), means that law is not only a ruling that is concrete, casuistic and individual (inconcreto law), but also values that live in society which is a measure of operational behavior.

In this regard, it can be understood that human beings are placed as the focus of the entire legal realm. In the paradigm philosophy of practical law, the position of man is for law and logic of law, so that humans are forced to enter into law, law is a law that is intended for humans. So, the law is denied legal separation from humanitarian and morality factors. The main principle used as a legal basis is law for humans and not vice versa. So, humans are made determinants and understood in this case humans are basically good. The consequence is that law is not something absolute and final but in the process of becoming (law as a process, law in the making). So, the law is for humans, which includes values of truth and justice which are the points of discussion of the law, so that ethics and morality cannot be separated from the discussion. So progressive law explicitly links legal, humanitarian factors with morality. For that, in every case submitted to a judge, he must remain guided by applicable laws and regulations, while upholding human values, truth and justice. According to Satjipto Rahardjo, law is only part of an effort to organize order in society, but it is not exactly the same as order. Order includes law but law is not the only way or way to create order. Whereas according to Asep Warlan Yusuf is a law that is regular and without suppressing the human dignity of every citizen, or in other words what is needed is a law that always serves the interests, justice, order and peace in order to support the realization of a society that is both inner and outer. Restoring an equitable law is interpreted as the basic attitude of the Indonesian people to recognize, respect and place a law that has the essence of justice above political interests in the state and social order. Restoring law in a reform era that upholds the values of democracy means that in shaping the law it must be carried out through an as pirational, accommodative, participatory and collaborative process while still prioritizing the interests of the people.

The decision of the ideal judge at least contains the idea of recitation which includes elements of justice, legal certainty and expediency. These three elements must be applied proportionally, which in turn results in a decision that meets the expectations of justice seekers. Related to Eddy O.S. Hiariej said that it is necessary to emphasize that in criminal law in Indonesia criminal acts and criminal liability are separated clearly. Criminal acts only include the prohibition of an act, while criminal liability includes the possibility of being convicted by the author / perpetrator. The basis and criminal acts are the principle of legality, while the basis and criminal responsibility is a non-criminal principle without error or geen straf zonder schuld. This is a fundamental difference with the Dutch criminal law which does not separate strafbaar van het feit and strafbaar van de dader and can then escape and prosecute. The adage used here is nullum crimen sine poena.

In connection with criminal prosecution, the following expert opinions can be listened to; that According to Aquinas, when the state imposes a criminal offense with the work power of treatment, it is necessary to pay attention to general prevention and special prevention (poenae praesentis vitae magical injection of medicinales quam retributive). Save the author, the theory of rehabilitation is also inseparable and the relative theory relating to prevention. Criminal as a drug d, Aquinas said was in order to improve the convict so that when he returned to the community, he would no longer repeat his actions as specifically intended. According to Lafave, criminal aims to restore justice which is known as Restorative justice. Restorative justice is understood as a form of approach to settling cases according to criminal law by involving perpetrators of crime, victims, families of victims or perpetrators and other related parties to seek a fair solution by emphasizing recovery in their original state and not in retaliation. The term restorative justice originates from Albert Eglash in 1977, who tried to distinguish three forms of criminal justice, respectively. It is retributive justice, distributive justice and restorative justice. According to Eglash, the focus of retributive justice is to punish the perpetrator for the crimes committed by him. While distributive justice has the goal of rehabilitation of the offender. While restorative justice is basically the principle of restitution by involving victims and perpetrators in a process that aims to safeguard reparations for victims and rehabilitation perpetrators. Marshall, as cited by Antony Duff, defines restorative justice as a process of parties involved in a crime jointly resolving by overcoming these actions and their implications in the future. The aim and restorative justice according to van Ness is to restore the security of the victims and perpetrators who have resolved their conflicts. M. Kay Harris, who cites the opinions of Braithwaite and Strang, provides two notions of restorative justice. First, restorative justice as a process concept is to bring together the parties involved in a crime to express the suffering they have experienced and determine what must be done to restore the situation. Secondly, restorative justice is a concept of value which contains different values and ordinary justice because it focuses on recovery and not punishment.

Thinking progressively means having to be brave to get out of the mainstream thinking of legal absolutism, then put the law in a relative position. In this case the law must be put in all humanitarian matters. The progressive mindset of law is certainly different from the positivistic-practical law that has been developing so far. The progressive law sees the main factor in the law as man himself. While the positivistic law - practically believes the truth of the law above humans. Humans may be marginalized as long as the law remains upright. On the contrary, the progressive paradigm of thinking thinks that law may be marginalized to support the process of existentiality of humanity, truth and justice.

3. Conclusion

In social relations, every human being has rights, and at the same time law arises. Human Rights (HAM) are rights inherent in humans that reflect their dignity, which must obtain legal guarantees, because rights can only be effective if those rights can be protected by law. Law is basically a reflection of human rights, so that the law contains justice or not, determined by human rights contained and regulated or guaranteed by the law. Law is not seen as a reflection of mere power, but also must emit protection of the rights of citizens. In addition, the role of law in society is so that the First: Communities and individuals are free from oppression, both oppression from the outside or other nations as well as oppression from within by the authorities and also oppression between fellow members of society. Second: the community is not treated authoritatively, the law must not be a tool of power of the ruler, may not be incarnated or personified themselves as law, individual freedom and independence must not be determined by the will or desires of the ruler. Third: The existence and position of the ruler based on the applicable legal rules, the law becomes the stake and the foundation of the authority and authority of the ruler, the ruler must not exceed the authority and function given by the law, such actions are against the law. Fourth: Characteristics of the most essential role of law is to guarantee security and protect the rights and interests of members of the local community in developing personal life, and in pursuit of spiritual and material happiness and well-being, each individual should be obedient and not act according to their wishes. human, then the implementation of Law or law enforcement must provide benefits and uses for the community. The community is very interested in the implementation or enforcement of law and justice

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