



Sentence Reduction For Justice Collaborators Based On Sema Number 04 Of 2011 In Corruption Crimes

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Abstract: Sentence reduction for Justice Collaborators in corruption cases is a reward or a gift for perpetrator who has collaborated with law enforcement officials in dismantling the case. When viewed in evidentiary theory, the reduction of punishment can be seen from the evidence of a Justice Collaborator in the trial. Based on the theory of justice, the granting of justice collaborator status is based on the judge's decision whereas the judge's decision is absolute in determining justice for what has been done by a justice collaborator, therefore the judge must see the efforts in the trial. This research was conducted with normative legal methods using legal literature materials consisting of theories, principles, legal principles, and laws and regulations related to and in accordance with this research. This research uses literature studies in the form of primary, secondary and tertiary legal sources.

Results of this study: Justice Collaborators have an important role in uncovering corruption cases. For their role, justice collaborators are entitled to protection and a reduction in sentence period as stated in SEMA No. 04/2011. And two, the granting of justice collaborator status at trial is the absolute authority of the panel of judges. In this case, the panel of judges based on the facts at trial will consider whether the justice collaborator has a central role so that he can be declared the main perpetrator.

Keywords: Sentence Reduction, Justice Collaborator, Corruption

INTRODUCTION

The Justice Collaborator issue that has occurred lately seems to be a new hope as a tool in proving organized crime. JC plays an important role and requires careful and in-depth conception and analysis. The honesty of a JC must be modeled and respected, given that the desire to speak honestly is very valuable at this time. So that the honesty and willingness of a Justice collaborator determines what kind of reward and punishment concept is suitable for a Justice Collaborator and how to form a good protection program at the investigation stage, prosecution or at the court stage and in correctional institutions that guarantee his safety from

terror due to his cooperation and honesty to law enforcement officials in uncovering cases that occur.

Justice Collaborator has been widely used in certain cases, for example in the case of Corruption Crime. Where we can see in the Djoko Tjandra Red Notice Bribery Case, which is the JC in the case is Tommy Sumardi. The Panel of Judges found Tommy guilty in a bribery case related to the removal of red notice at Interpol on behalf of Joko Soegiarto Tjandra alisa Djoko Tjandra. Another example in the case of JC in corruption is the case of Agus Condro Priyatno in the case of bribery in the election of Senior Deputy Governor of Bank Indonesia Miranda Swaray Goeltom. Where Agus became the first whistleblower as well as a cooperating actor (Justice Collaborator). The judge sentenced Agus to 1 year and 3 months, and only slightly different from the other defendants, namely Wiliem Max Turuarisma, in the form of a sentence of 1 year and 6 months, as well as Max Moein and Rusman Lumban Toruan with 1 year and 8 months each. If you look at the two examples of these cases, Justice Collaborator has an important role in dismantling the case. However, the crime of corruption itself is not easy to dismantle and the incidence is very much happening in Indonesia.

The level of corruption (tipikor) in Indonesia is still very high and can be considered a problem that has spread rapidly throughout the government. The significant increase in the number and quality of corruption cases from year to year makes it one of the most serious national problems. The development of such corruption is particularly noteworthy because the holders of power often abuse it for their personal, family, group or special relationship interests.¹ The consequences of corruption are very dangerous for the stability and security of the country. Corruption has the potential to undermine all aspects and sectors of society as a whole. Deep-rooted corruption in the country can cause an economic crisis, undermine democratic principles, and destroy moral values in society.²

Corruption crimes often involve perpetrators who have high social status or are involved in "white collar" crimes and are committed through structured and organized crime networks, so extraordinary actions are needed in an effort to eradicate them (extraordinary action). Corruption crimes are often committed in a very secretive manner, making it difficult for law enforcement officials to uncover them. One strategy that can be used by law enforcement officials is to involve individuals who are also involved in the crime to provide information and assistance in uncovering the crime. Sometimes, these individuals have to sacrifice their personal interests and even their safety to assist in the investigation, and they are then known as justice collaborators.

To continue writing about justice collaborators in accordance with the title of this research, to determine a person as a justice collaborator, according to SEMA No. 4 of 2011, there are several guidelines, namely:

1. The person concerned is one of the perpetrators of certain criminal offenses as referred to in this SEMA, admits the crime committed, is not the main perpetrator in the crime and provides witness testimony in the judicial process.
2. The Public Prosecutor in his indictment stated that the person concerned had provided very significant information and evidence so that the investigator and/or public prosecutor could effectively reveal the criminal offense in question, reveal other perpetrators who had a greater role and/or return assets/results of a criminal offense.
3. For their assistance, the judge in determining the punishment to be imposed may consider the following matters:
 - a. Impose special conditional probation, and or

¹ Romli Atmasasita, "Around the Problem of Corruption, National and International Aspects", Bandung: Mandar Maju, 2004, hlm. 1.

² Rika Ekayanti, "Legal Protection of Justice Collaborators Related to the Handling of Corruption Crimes in Indonesia," Journal of Udayana Master of Laws, Vol. 4, No. 1, Mei 2015.

- b. To impose a punishment in the form of the lightest imprisonment among other defendants found guilty in the case.³

In addition to obtaining immunity or leniency in prosecution, individuals who cooperate with law enforcement also have other rights such as physical and mental protection, legal protection, and special care. Given the lure of these tantalizing privileges, many defendants in corruption cases choose to become justice collaborators. However, it is not as easy and there are many classifications of the basis of the judge's consideration in making a defendant a justice collaborator in a court case.

METHOD

This research uses Normative Legal Research in order to be developed and designed by examining the rules, norms, rules related to the problem under study with an approach to the Law and several examples of cases intended to collect various kinds of laws, theories and literature that are closely related to the problem to be studied.

RESULTS AND DISCUSSION

Factors in the Achievement of Sentence Reduction for Justice Collaborators Based on SEMA Number 04 Year 2011 in Corruption Crimes in Indonesia

The reduction of punishment for justice collaborators in corruption crimes as happened in the Agus Condro case and the Tommy Sumardi case is in line with number 9 letter c of SEMA Number 4 of 2011 concerning Treatment for Whistleblowers and Witnesses of Cooperating Actors (Justice Collaborators) in Certain Criminal Cases. Agus Condro and Tommy Sumardi for their role as justice collaborators were considered in the sentencing so that the imprisonment imposed was the lightest compared to other defendants in the case. This consideration basically reflects the theory of special justice. Justice in particular is interpreted as justice on the basis of proportionality. Tommy Sumardi, who became a justice collaborator with his role in assisting law enforcement in uncovering criminal cases, was entitled to the lightest sentence compared to other perpetrators. This lightest verdict then reflects the existence of vindicative justice for Tommy Sumardi. Vindicative justice is justice for someone who is sentenced on the basis of the actions committed. The role as a justice collaborator is then the basis for reducing the sentence period and reflecting vindicative justice for a person.

This reduction in punishment is an award for justice collaborators in exposing organized crimes such as corruption. However, it cannot be denied that the sentence reduction given to justice collaborators, especially in corruption crimes, is still not significant. Therefore, synergy is needed from law enforcement officials, especially judges, to further consider the role of justice collaborators and the role of the state to present special rules for justice collaborators so that their role in exposing crimes can be taken into account.

Based on the explanation that has been done, it can be seen that justice collaborators have a very important role and position in revealing the case that is happening. Moreover, justice collaborators in organized crimes such as corruption. In the role that has been carried out, justice collaborators in corruption crimes receive protection and appreciation, one of which is a reduction in sentence period as SEMA Number 4 of 2011. The factors that make the panel of judges consider the role of justice collaborators to reduce the sentence include their role as justice collaborators, submitting information and evidence as an effort to cooperate with law enforcement to uncover cases, being honest and admitting the criminal acts committed, and returning the money received from the proceeds of the crime.

³ Supreme Court Circular Letter (SEMA) 4/2011 on the Treatment of Whistleblowers and Justice Collaborators in Certain Criminal Cases.

The consideration of the panel of judges in mitigating the sentences of Agus Condro and Tommy Sumardi shows that justice collaborators have a very important role in helping law enforcement uncover criminal acts. Moreover, the crime revealed is an extraordinary organized crime. Through the help of Agus Condro and Tommy Sumardi as justice collaborators, this case can be revealed clearly. Without information from the justice collaborator, this case may take a long time to process and may even be stopped.

Granting Justice Collaborator Status at Trial Must Be Based on Judge Considerations.

Based on the decision of the panel of judges in their consideration in Decision Number 32/Pid.Sus/TPK/2016/PN.Jkt.Pst, it can be seen that the panel of judges rejected Abdul Khoir's justice collaborator application, because Abdul Khoir had a central role in the corruption crime committed. This then makes Abdul Khoir included in the main perpetrator. As the main perpetrator, it is clear that his justice collaborator status cannot be considered and accepted by the panel of judges as explained in SEMA Number 4 of 2011. The panel of judges was also of the opinion that the determination of the defendant as a justice collaborator based on the KPK Chairman's Decree was inappropriate so that it could not be used as a guideline for the panel of judges for the imposition of punishment for the defendant in this case.

In essence, the status of justice collaborator proposed by the defendant or investigator is not a guarantee that it will be accepted by the panel of judges. However, it should also be remembered that although the cases of Irman and Sugiharto and Abdul Khoir are examples of justice collaborators who were rejected by the panel of judges, there are still many cases where the submission of justice collaborator status is accepted and considered by the panel of judges. This is the case of Agus Condro and Tommy Sumardi who were granted justice collaborator status by the panel of judges and taken into consideration in making a decision.

The consideration of the panel of judges in accepting or rejecting the status of justice collaborator is closely related to the theory of evidence. In the trial process, the panel of judges by looking at the existing evidence will consider whether the defendant is the main perpetrator in the criminal offense or not. If the perpetrator is a criminal offense, the application for justice collaborator by the panel of judges will be rejected. To prove whether the justice collaborator applicant is the main perpetrator or not, the panel of judges refers to Article 183 of the Criminal Procedure Code. Through this, it can be seen that the determination of justice collaborators by the panel of judges cannot be separated from the theory of evidence considering that evidence is very important to see the guilt of the defendant and impose a sentence.

Research conducted by Nomer Armandheo Simamora and Edi Pranoto states that there are several considerations of the panel of judges in determining the status of justice collaborator. These considerations include the following:⁴

1. Aware of the wrongdoing committed.

The main requirement to become a justice collaborator is confession as stipulated in SEMA Number 4 of 2011. In this context, the confession of a perpetrator witness must be honest and wholehearted about the criminal offense he has committed. This confession can be seen from the beginning of the investigation process until the trial process.

2. Not the main perpetrator.

The requirement to be granted justice collaborator status in accordance with the regulations stated in SEMA Number 4 Year 2011 is that the justice collaborator must not be considered as the main perpetrator in a criminal offense. The involvement of the

⁴ Nomer Armandheo Simamora, Edi Pranoto Pranoto. " Juridical Review of the Determination of a Person's Status as a Justice Collaborator in Indonesia." *Iblam Law Review* 3.1 (2023): 49-60.

perpetrator witness in the criminal offense is not as the main perpetrator but as an intermediary in the criminal offense.

3. Be cooperative and provide clear information.

Law No. 31/2014 on Witness and Victim Protection sets specific requirements for witnesses who become justice collaborators. One of the requirements is that the cooperating perpetrator witness must provide honest and accurate information or testimony during the trial. Article 10 paragraph (2) of the law explains that the testimony of a justice collaborator can be considered by the judge to reduce the sentence imposed on them. The same thing is regulated in SEMA No. 4/2011, which states that a perpetrator witness who provides testimony as a witness during the trial can be considered as a justice collaborator. However, if the perpetrator witness does not provide testimony during the trial, then they cannot be considered as a justice collaborator and therefore are not entitled to a reduced sentence.

4. Provide clear information on the chronology of the crime and the roles of all perpetrators involved.

SEMA No. 4/2011 also stipulates another requirement that in addition to acting as a witness, a justice collaborator must be able to provide a detailed chronology of how the criminal offense occurred. The justice collaborator must also reveal the role and involvement of other perpetrators who have an important role in the criminal offense. The other perpetrators referred to are all individuals who are directly or indirectly involved in the criminal act, work together, and are organized, starting from the beginning of the criminal act until the end of the criminal act.

5. The public prosecutor states the role of the person who has been submitted.

SEMA No. 4/2011 also stipulates the last requirement related to justice collaborators, namely that the Public Prosecutor must explain in the indictment the role of each individual involved in a particular criminal offense as submitted by the justice collaborator. This will help to clearly identify who has the main role in committing organized crime. In addition, this will also show whether the justice collaborator only participated or may also have a leading role in the criminal offense.

As explained earlier, in the process of determining the status of justice collaborators, there are differences of opinion or indicators used as a reference between investigators, public prosecutors, and judges examining the case. Investigators and prosecutors usually focus more on perpetrator witnesses who can provide very important information and evidence so that they can effectively reveal criminal acts and identify other perpetrators who have a greater role or return assets from criminal acts. On the other hand, judges refer to the provision that justice collaborators should not be the main perpetrators as explained in the Supreme Court Circular Letter No. 4 of 2011.⁵

The requirement to be granted justice collaborator status as stipulated in SEMA Number 4 Year 2011 is that the justice collaborator must not be the main perpetrator in a criminal offense. To prove that the justice collaborator is not the main perpetrator, it can be shown when the justice collaborator provides all the information he/she knows about a criminal event in court. In addition, clarification from other witnesses must also be obtained which shows that the involvement of the justice collaborator in the crime is not as the main perpetrator, but only as an intermediary.⁶

It should be noted that the authorized party to determine whether the justice collaborator is the main perpetrator or not is the panel of judges. Therefore, it can be seen

⁵ Mita, Beniharmoni Harefa Nurashiah, Riki Perdana Raya Waruwu. "Criminal Disparity Against Justice Collaborator in Corruption Crime." *Journal of Legal Essence* 4.1 (2022): 88-98.

⁶ Nomero Armandheo Simamora, Edi Pranoto Pranoto. "Juridical Review of the Determination of a Person's Status as a Justice Collaborator in Indonesia." *Iblam Law Review* 3.1 (2023): 49-60.

that the panel of judges in determining the status of the justice collaborator refers to the facts in the trial to see whether the justice collaborator is the main perpetrator or not. When the justice collaborator is proven not to be the main perpetrator, the panel of judges will determine his status as a justice collaborator which then becomes the basis for consideration in handing down a verdict. Based on the analysis conducted by the author, it can be seen that the panel of judges in determining the defendant's justice collaborator status considered that the defendant was not the main perpetrator in the criminal act.

CONCLUSION

Based on the explanation that has been done, the conclusions of this research include:

1. Justice collaborators have an important role in uncovering corruption cases. For his role, the justice collaborator is entitled to protection and a reduction in the sentence period as SEMA Number 4 of 2011 Treatment for Whistleblowers and Witnesses of Cooperating Actors (Justice Collaborators) in Certain Criminal Cases. The factors that made the panel of judges consider the role of a justice collaborator to reduce the sentence included: Delivering information and evidence as an effort to cooperate with law enforcement to uncover cases, being honest and admitting the criminal acts committed, and returning the money received from the proceeds of the crime.
2. Granting the status of justice collaborator at trial is the authority of the panel of judges. Regarding the judge's consideration in granting the defendant's justice collaborator application, the judge will consider several aspects including that the defendant can cooperate cooperatively and in good faith during the trial, does not cover up and the testimony is in line with what the defendant explained. In this case the panel of judges based on the facts at trial will consider whether the justice collaborator has a central role so that it can be declared the main perpetrator. (In determining whether a suspect is the main perpetrator or not is by looking at the defendant's role in the corruption case. The defendant who has a large and active role in each of his activities can be said to be the main perpetrator in his crime, so he cannot be used as a justice collaborator. A big role here means that the suspect is active in all his criminal activities). If the justice collaborator is proven not to be the main perpetrator, the panel of judges will determine his status as a justice collaborator as SEMA Number 4 of 2011.

ADVICE

The suggestions that the author presents in this study include the following:

1. For the government, it is expected to present regulations related to justice collaborators explicitly and clearly. It is hoped that the regulation can be used as a reference by all parties so as to anticipate differences of opinion in determining the status of justice collaborators which have the potential to harm justice collaborators.
2. For the panel of judges, it is expected to add articles regarding the classification of the role and participation of the justice collaborator in the criminal offense committed, so that the parties who have volunteered as justice collaborators are truly in accordance with the criteria shown. Because in the Supreme Court Circular Letter Number 04 of 2011 only outlines the requirements to become a justice collaborator.

REFERENCE

- Mita, Beniharmoni Harefa Nurashah, Riki Perdana Raya Waruwu. "Criminal Disparity Against Justice Collaborator in Corruption Crime." *Journal of Legal Essence* 4.1 (2022).
- Nomero Armandheo Simamora, Edi Pranoto Pranoto. " Juridical Review of the Determination of a Person's Status as a Justice Collaborator in Indonesia." *Iblam Law Review* 3.1 (2023).

Rika Ekayanti, "Legal Protection of Justice Collaborators Related to the Handling of Corruption Crimes in Indonesia," *Journal of Master of Laws Udayana*, Vol. 4, No. 1, Mei 2015.

Romli Atmasasita, "Around the Problem of Corruption, National and International Aspects", Bandung: Mandar Maju, 2004.

Supreme Court Circular Letter (SEMA) 4/2011 on the Treatment of Whistleblowers and Justice Collaborators in Certain Criminal Cases.

Tommy Sumardi, perantara dikasus Red Notice di tuntutan 1,5 tahun penjara.

<https://nasional.kompas.com/read/2020/12/15/17031671/tommy-sumardi-perantara-dik-sus-red-notice-djoko-tjandra-dituntut-15-tahun>.