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Judge Disparity in Imposing Sanctions against Justice Collaborators

Case Study of Decision Number 1031/Pid.B/2022/Pn.Mks and
Decision Number 798/Pid.B/2022/Pn.Jkt.Sel

Indi Nuroini¹, Dr. Sisca Utami Damajanti², Mochamad Djalil³, Denna Aprilia^{4*}

¹nuroini.indi@gmail.com, ²siscadamavatiutami@ubhara.ac.id,

³muhammaddjalil99@gmail.com, ⁴dennaaprilias15@gmail.com

Universitas Bhayangkara Surabaya

*Corresponding Author: Denna Aprilia

Email: dennaaprilias15@gmail.com

ABSTRACT

Premeditated murders are quite challenging to obtain additional statements as there are generally no witnesses at the crime scene. However, the perpetrators have already planned to eliminate possible witnesses. Therefore, the role of the perpetrator's witness (justice collaborator) is very important in the investigation process and court decision. According to the Criminal Code, the legal subject of the case is a "person" (for example, in article 340 of the Criminal Code, it is referred to as "anyone," which means a specific individual). This research aims to understand the role of justice collaborators in sanction decisions by judges and analyze the differences in judges' decisions through a study of two decisions: 103/Pid.B/2022/Pn.Mks and 798/Pid.B/2022/Pn.Jkt.Sel. This research used normative approach, relying on secondary data such as laws, court decisions, and legal theories. This research showed that there is no specific regulation on sanctions for a justice collaborator (witness who cooperates with law enforcement) in Indonesia. Judges have the flexibility to consider the sanctions imposed on justice collaborators, so there are often differences in punishment even though the offenses are the same. Justice collaborators get an advantage in law if they help law enforcement officials solve criminal cases.

Keywords: Judge Disparity, Justice Collaborators, Sanctions

INTRODUCTION

Every country has a different perspective on how to impose sanctions on criminals. It is affected by many things, such as people's daily lives and social development in that country. There are still many crimes in Indonesia that need to be handled so that people feel safe and comfortable (Fardiansyah, 2021). Due to the development of society and technology, criminals are becoming smarter in avoiding punishment. In the past, many crimes occurred accidentally, but now many perpetrators commit crimes intentionally and premeditatedly, such as in a premeditated murder case.

In addition, the Criminal Code (KUHP) also regulates the killing of a person, known as murder. Different types of acts can be classified as murder or crimes against life (*misdrijven tegen het leven*) (Mangare, 2016). According to the Criminal Code, the intentional killing of another adult is considered to be murder. A murder case requires the perpetrator to commit a specific act or series of acts that causes the death of another person, provided that the perpetrator's intention indicates a desire for the person to die. Therefore, it is not possible to discuss the crime of murder if the death of another person has not occurred (Lamintang & Lamintang, 2014).

Premeditated murder crimes often have problems in obtaining additional information. This situation occurs because the perpetrator usually has a well-planned scheme and tries to minimize the presence of witnesses at the crime scene. As a result, perpetrator witnesses or justice collaborators become very important in investigations and court decisions. According to the Criminal Code, offenses are addressed to the legal subject "person," as indicated in Article 340 of the Criminal Code, which refers to "anyone" as the subject of the offense of premeditated murder. Although this article refers to "anyone" as one person, the reality is that crimes often involve more than one perpetrator. In criminal law, a criminal offense can involve several individuals who contribute to the actions that lead to a crime. In the case of Richard Eliezer (verdict Number 798/Pid.B/2022/Pn.Jkt.Sel), who became a justice collaborator, there was a significant sanction compared to Chaerul Akmal's case, even though both were charged with Article 340 of the Criminal Code in conjunction with Article 55 Paragraph (1). The Article 55 Paragraph (1) raises questions about the extent to which the role of justice collaborators influences judges' decisions in imposing sanctions.

According to Nurasiah et al (2022), the results of this research indicated that one of the factors causing criminal disparity against justice collaborators is the non-existence of sentencing guidelines that regulate the overall basis of punishment and protection for justice collaborators. For this reason, it is necessary to formulate criminal guidelines to minimize the possibility of criminal disparity

so that the fulfillment of rewards for justice collaborators can be fulfilled without causing victims of injustice.

Meanwhile, according to Gulo & Muharram (2018), the results showed that in deciding cases, judges are subject to Article 197 of the Criminal Procedure Code, namely the judge must have his own considerations in determining the severity or leniency of the sentence to be imposed on the defendant, through material evidence at trial to support the conclusions in the judge's consideration. Currently, the judiciary in Indonesia still uses a method of sentencing based on trial examinations alone. This causes court decisions issued by judges to differ between one decision and another, which is called criminal disparity.

Then, according to Khairi (2022), the results of this research show that the judge's consideration in giving a decision is divided into two, namely juridical ones, namely the prosecutor's indictment, statements of defendants and witnesses, evidence and articles related to this case, and non-juridical ones, namely aggravating and mitigating circumstances, motives, and the social status of the defendant. Then after the facts of the trial are summarized, then followed by the conviction of the Panel of Judges, these things are taken into consideration by the judge in making a decision in this corruption case.

The objectives of this research are to determine the role of justice collaborators in the imposition of sanctions by judges and to analyze the disparity of judges' decisions through a study of decision 1031/Pid.B/2022/Pn.Mks and Decision Number 798/Pid.B/2022/Pn.Jkt.Sel.

LITERATURE REVIEW

The Concept of Justice Collaborator in the Criminal Law System

Justice collaborator is a criminal who chooses to cooperate with law enforcement officials in the investigation or trial process to reveal other criminal acts or other perpetrators. This term has developed along with the increasing need to uncover criminal networks that are difficult to reach through ordinary legal processes. In the Indonesian context, justice collaborators are regulated through the Supreme Court Circular Letter (SEMA) No. 4/2011, which provides guidance for judges in considering the role of justice collaborators as a factor in mitigating punishment. While justice collaborators are expected to assist the court process, their position as perpetrators of criminal acts often creates complexity in the imposition of sanctions.

Disparity in Judges' Decisions and its Influential Factors

Disparity in sentencing, especially for justice collaborators, is a phenomenon that is often discussed in legal research. This disparity refers to significant variations in the sanctions imposed by judges in similar cases. According to Yusmadi (2024), these differences are often caused by various factors, including the judge's interpretation of legal regulations, available

evidence, and the judge's psychological condition when deciding the case. Henry & Wibowo (2018) explains that external factors, such as community views or media pressure, can also influence judges' judgment in cases involving justice collaborators.

RESEARCH METHODOLOGY

This research uses a normative legal method, which examines existing laws (both written and unwritten) based on secondary data such as laws, court decisions, and legal theories. The focus of this research is developing legal understanding based on literature and rules that are related to legal protection for perpetrator witnesses. The approach used in this research is a statutory approach, which examines positive law in Indonesia, especially regarding the application of sanctions for witnesses who cooperate as justice collaborators. The sources of legal materials used are divided into two, consisting of primary legal materials consisting of laws and court decisions, and secondary legal materials in the form of textbooks, legal journals, literature, and other studies that support the understanding of legal protection for cooperating witnesses. According to Marzuki (2016), primary legal materials include all regulations that have legally binding force, including laws, government regulations, regional regulations, and court decisions. Marzuki emphasized that primary legal materials are a legitimate basis for analysis in the legal research process because of their formal and binding enforcement in society. Meanwhile, Mertokusumo (2014) stated that primary legal materials are legal rules that are based on the state and formed by legitimate authorities, such as laws and judicial decisions. He said that primary legal materials are different from secondary legal materials which function as explanations of primary legal materials. On the other hand, Soekanto & Mamudji (2015) explained that materials that explain primary legal materials, including legal literature that can be used to understand and interpret the law. They also mentioned that secondary legal materials include journals, legal dictionaries, and encyclopedias. Then, Ibrahim (2015) stated that secondary legal materials are legal sources that provide additional information or interpretation to understand primary legal materials. This secondary legal material consists of academic literature and interpretations from legal experts that are important in normative legal research. All legal materials collected were then classified into appropriate chapters and analyzed to examine legal protection for perpetrator witnesses. The analysis was conducted descriptively to provide a clear and accurate overview of the facts and characteristics of the research.

RESULT AND DISCUSSION

The Role and Characteristics of Justice Collaborators in the Criminal Law Enforcement Process in Indonesia

Witnesses in Criminal Procedure

The definition of witness according to Soesilo is a statement conveyed before a judge under oath, regarding something he heard, saw, or experienced himself (Suisno, 2014). Meanwhile, according to Sudikno Mertokusumo, a witness is a statement given to a judge in court orally and personally by someone who is not prohibited or allowed by law, who is summoned by the court (Rasyid & Herinawati, 2015). The requirements to be a witness include formal and material requirements. The formal requirements mean that witnesses are valid if they are over 15 years old, healthy minded, do not have a family or marital relationship with the relevant party, and do not have a working relationship with the party concerned. Witnesses must also be in attendance at the hearing, swear an oath according to their religion, and provide oral witness testimony. Material requirements emphasize that the witness's testimony alone is not sufficient as valid evidence, but if the information provided is in accordance with the facts and does not contradict common sense, the testimony can be used as evidence.

The types of witnesses include several categories, such as witnesses A Charge, which is a witness who incriminates the defendant and is chosen by the public prosecutor, and witnesses A De Charge, which is a witness who mitigates the defendant and is submitted by the defendant or his attorney. There is also an expert witness, which is someone with special expertise related to the case to help the judge decide, and a victim witness, who is both a witness and a victim who experienced the incident firsthand. De Auditu witnesses are witnesses who provide information based on information from other people, and whistleblower witnesses are witnesses who report alleged criminal acts. Crown witnesses are suspects who are used as key witnesses in exchange for reduced sentences.

Distinction between Crown Witness and Justice Collaborator

A crown witness is a suspect or other defendant who is involved in the same crime and is used as a witness to expose other perpetrators, in exchange for a lighter prosecution or pardon. A Justice Collaborator, on the other hand, is someone involved in a crime but not the main perpetrator, who is willing to provide important information and evidence to help investigations and law enforcement.

The Role of Justice Collaborators in the Disclosure of Criminal Offenses

Justice collaborators have an important role in uncovering criminal networks, providing evidence, and assisting law enforcement. However, their role also includes challenges such as witness safety and public perception. In

Indonesia, justice collaborators have the role of uncovering criminal acts or assets from crimes, providing information to law enforcement, and testifying in court. The role of justice collaborators in Case Number 1031/Pid.B/2022/Pn.Mks and Decision Number 798/Pid.B/2022/Pn.Jkt.Sel indicated that in several cases, there were differences in decisions based on the Supreme Court Circular Letter No. 4/2011. For example, in the Chaerul Akmal case, the justice collaborator involved in the criminal offense was assigned a special role in the case disclosure process, in accordance with the characteristics regulated in the circular letter.

The Obligation of Judges to Impose Different Verdicts Based on the Status of Justice Collaborators

Justice Collaborator Arrangement in Indonesia

In Indonesia, justice collaborators are also referred to as “perpetrator witnesses” or “cooperating perpetrator witnesses”. This term emerged after the issuance of Supreme Court Circular Letter (SEMA) No. 4/2011 on Arrangements for Whistleblowers and justice collaborators in certain criminal cases. Before SEMA No. 4/2011, both justice collaborators, who are part of the perpetrators of certain crimes, and whistleblowers, who know and report crimes without being involved, were all referred to as whistleblowers.

Judge’s Consideration

The judge’s consideration is the stage where the panel of judges assesses the facts that have emerged during the trial. This consideration is an important aspect in determining a verdict that reflects justice and legal certainty, as well as providing benefits to the parties involved. Therefore, the judge’s consideration must be carried out carefully, thoroughly, and carefully. If not, the resulting decision can be overturned by the higher court or the Supreme Court because it is considered not careful.

Role Analysis as a Justice Collaborator

The role of justice collaborators in the imposition of sanctions can be assessed based on the characteristics stipulated in Supreme Court Circular Letter No. 4/2011. The case study of Decision No. 1031/Pid.B/2022/Pn.Mks, the defendant Chaerul Akmal, S.H. was proven to have committed premeditated murder with the other witnesses, namely Muhammad Iqbal Asnan, S.H., M. Asri, and Sulaiman aka Sule, on Sunday, April 3, 2022, at around 10.00 WITA, on Danau Tanjung Bunga Street, Makassar. They intentionally and premeditatedly took the life of the victim Najamuddin Sewang. This act was charged under Article 340 jo Article 55 Paragraph (1) of the Penal Code, and the defendant Chaerul Akmal was sentenced to 20 years imprisonment. However, the characteristics to qualify as a justice collaborator were not met by the defendant.

CONCLUSION AND SUGGESTION

Conclusion

Criminal law is a state regulation that regulates prohibited or required acts, and the sanctions for violators. In Indonesia, perpetrator witnesses or justice collaborators have an important role in solving organized crime. The main difference between a crown witness and a justice collaborator is that a crown witness appears due to a lack of evidence, so that a perpetrator can testify against other perpetrators, while a justice collaborator is a perpetrator who is not the main perpetrator who admits his/her guilt and helps reveal the crime. There are no specific sanction rules for justice collaborators, so clear regulations are needed so that they can work well in exposing crimes. It is important for the government to establish a law that regulates the protection and rewards for whistleblowers and justice collaborators. Judges also have the authority to decide on sanctions for cooperating witnesses, which can lead to different verdicts despite using the same article. Based on the Judicial Power Law, judges must consider the good and bad character of the defendant in determining the sentence. Law formation aims to create general rules, but if there are no written rules, judges must interpret them.

Suggestion

The implementation of justice collaborators in Indonesia still faces significant challenges due to the lack of clear and detailed legal guidelines. Current regulations do not sufficiently outline the role, criteria, or protections for justice collaborators, leaving much room for varied interpretations by law enforcement and judicial officials. This ambiguity hinders the effective use of justice collaborators in dismantling complex criminal networks and often leads to inconsistencies in their treatment across cases. Without clear guidance, law enforcement may apply existing regulations in a limited or uneven manner, which prevents justice collaborators from receiving the support and legal protection they need. As a result, the primary objective of utilizing justice collaborators, to enhance the efficacy of law enforcement, has yet to be fully realized.

To address these issues, it is essential that the government acts promptly to establish comprehensive and detailed regulations governing justice collaborators. Clearer rules would provide a uniform framework for law enforcement and judiciary bodies, ensuring consistent recognition and fair treatment for individuals who cooperate with legal authorities. By standardizing the criteria for recognizing justice collaborators and outlining protections for their safety and legal rights, such regulations would encourage individuals involved in criminal activities to step forward and assist in uncovering broader criminal operations. This improvement is expected to foster a more equitable and effective law enforcement process, ultimately reinforcing public trust in the legal system and providing justice for those willing to collaborate in resolving criminal cases.

REFERENCES

- Fardiansyah, A. I. (2021). Why Indonesia maintain capital punishment? *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 15(1), 25–38.
- Gulo, N., & Muharram, A. K. (2018). Disparitas dalam Penjatuhan Pidana. In *Masalah-Masalah Hukum* (pp. 215–227).
- Henry, E., & Wibowo, A. (2018). Disparitas Putusan Hakim dalam Menjatuhkan Pidana pada Tindak Pidana Narkotika. *UNES: Journal of Swara Justisia*, 2(1).
- Ibrahim, J. (2015). *Teori dan Metodologi Penelitian Hukum Normatif*. Bayumedia Publishing.
- Khairi, H. Al. (2022). *Disparitas Pertimbangan Hakim dalam Penjatuhan Hukuman terhadap Pelaku Tindak Pidana Korupsi Penyalahgunaan Dana Desa (Studi Putusan Nomor: 77/Pid.Sus-TPK/2019/PN Bna dan Putusan Nomor 52/Pid.Sus-TPK/2021/PN Bna)*. Universitas Islam Negeri Ar-Raniry Banda Aceh.
- Lamintang, P. A. F., & Lamintang, F. T. (2014). *Dasar-Dasar Hukum Pidana di Indonesia*. Sinar Grafika.
- Mangare, P. (2016). Kajian Hukum Tindak Pidana Pembunuhan Anak oleh Ibu Kandungnya (Menurut Pasal 134 KUHP). *Lex Privatum*, 4(2), 82–91.
- Marzuki, P. M. (2016). *Penelitian Hukum Edisi Revisi*. Kencana.
- Mertokusumo, S. (2014). *Penemuan hukum: sebuah pengantar*. Cahaya Atma Pustaka.
- Nurasiah, M., Harefa, B., & Waruwu, R. P. R. (2022). Disparitas Pidana terhadap Justice Collaborator dalam Tindak Pidana Korupsi. *Jurnal Esensi Hukum*, 4(1).
- Rasyid, L. M., & Herinawati. (2015). *Pengantar Hukum Acara Perdata*. Unimal Press.
- Soekanto, S., & Mamudji, S. (2015). *Penelitian hukum normatif: suatu tinjauan singkat*. Rajawali Pers.
- Suisno. (2014). Keterangan Saksi Via Teleconference dalam Pembuktian Perkara Pidana di Indonesia. *Jurnal Independent*, 2(1).
- Yusmadi. (2024). Faktor Terjadinya Disparitas terhadap Penjatuhan Sanksi Pidana. *Jurnal Tahqiq*, 18(1).