

STUDY ON THE LAW PROTECTION ASPECT OF COOPERATING WITNESS ACTORS (JUSTICE COLLABORATOR) IN THE NARCOTIC CRIME CONNECTED WITH THE LAW PRINCIPLES

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***ABSTRACT**---This study aims to determine the regulation of witnesses who collaborate (justice collaborator) in relation to efforts to provide legal protection by considering the principle of legal certainty. The research method used is a normative juridical research method, the approach used is the statutory approach, conceptual approach and case approach. The analysis technique in this study uses qualitative analysis. The results of this study indicate that several regulations that contain legal protection for witnesses who collaborate (justice collaborator) in Law Number 13 of 2006 are subsequently changed to Law Number 31 of 2014 on Witness and Victim Protection, as well as in the Supreme Court Circular Number 4 of 2011. Whereas the protection efforts must be based on a sense of community justice and legal certainty guarantees by law enforcement officials.*

***Keyword**---Law Protection, Justice Collaborator, Narcotics Crimes*

I. Introduction

Crime or crime is one form of deviant behavior that is always there and is inherent in every form of society, there is no society that is devoid of crime. Crimes occur in every space, place and time, crime is a phenomenon in human life, an effort that can be done is to prevent and reduce crime in society.¹ Therefore, in order to achieve justice, peace and the common goals of the community, it is necessary to have rules that contain orders and prohibitions to do something which if violated will be sanctioned by competent state agencies, so these regulations must be obeyed and obeyed by everyone, called criminal law.² One of the crimes that is happening today is massive and even alarming is the misuse of narcotics.

Problems related to narcotics abuse as regulated in Law Number 35 Year 2009 on Narcotics, that narcotics crime has become a national problem even in certain cases drugs are at the point of international scale problems, because they have involved carriages and inter-state networks (transnational) crime). Every day it is not uncommon to find news related to narcotics and their abuse. Basically, in certain cases and in the appropriate portion, the use of narcotics is permitted and recommended. But far from that, in fact narcotics become a promising and growing business arena.

Currently narcotics crime is not only done individually but has involved many people in groups and work together to form a planned, neat and confidential organized network syndicate with a wide network, high mobility and using a new

¹ Dhanang Bagus Amggoro, *Justification of Granting Authority to Narcotics Criminal Investigators in Determining Justice Collaborators*, Thesis, Yogyakarta: Indonesian Islamic University, 2017, page 1

² Zainal Abidin Farid, *Pidana 1 Law*, Jakarta: Sinar Grafika, 2007, page 1

modus operandi. In addition, organized crime perpetrators certainly are people who have the ability to organize their roles, motives, duties and functions both before the crime is committed to carrying out the activity of removing traces after the crime is committed so that it presents many challenges to law enforcement officials. Due to the growing development of Narcotics criminal syndicates, a new breakthrough is made in law enforcement, namely maximizing the role of witnesses in collaboration with law enforcement officials (justice collaborator).

The role as a witness of a collaborating actor (justice collaborator) is someone as a suspect but not the main actor and can dismantle the people involved on it. In Law Number 13 of 2006 on Protection of Witnesses and Victims, it does not provide a definition of a reporter who is a witness in a collaborative act.³ However, the institution that has the task and function of providing protection for witnesses and victims is the Witness and Victim Protection Agency (LPSK), so that in this case a justice collaborator is considered as a witness when reporting a narcotics crime.

In connection with the reality of the position of witnesses who collaborate (justice collaborator) by the Supreme Court of the Republic of Indonesia has issued a Supreme Court Circular Letter (SEMA) Number 4 of 2011 on Treatment for Reporters of Criminal Acts (whistleblowers) and Witness Actors who Cooperate (justice collaborator) in In Certain Crimes Cases. These provisions provide instructions for judges to give special treatment to people who can be categorized as criminal reporters and witnesses of collaborating actors, among others, by providing criminal relief and / or other forms of protection such as personal safety of families and property, and free from threats that with regard to reports, testimonies, which will or are being given, the right to provide information without pressure, obtain a new identity, obtain a new residence, and obtain legal counsel.

Based on the background above, the problem will be examined regarding how the legal arrangements against witnesses who collaborate (justice collaborator) in positive law in Indonesia. In addition, how is the form of legal protection for witnesses who collaborate (justice collaborator) in Narcotics crimes related to the principle of legal certainty.

II. Literature Review

Organized crime such as narcotics misuse is very detrimental and constitutes a huge danger to human life, society, nation, and state as well as Indonesia's national security. Law Number 35 of 2009 on Narcotics explains that importing, exporting, producing, planting, storing, distributing, and / or using narcotics without strict and careful control and supervision and in contravention of statutory regulations is a narcotics crime. Actions taken related to narcotics abuse are regulated in Article 111 to Article 126 of Law Number 35 Year 2009 on Narcotics, which can be done through several methods or modus operandi, namely dealers, smugglers and user groups.

Regulations regarding witness collaborating (justice collaborator) have not been clearly regulated in criminal law in Indonesia. But in an etymological sense, justice collaborator comes from the word justice, which means justice.⁴ While collaborate means to collaborate, produce, and create. In terminology, justice collaborator is defined as one of the perpetrators of a particular crime that recognizes the crime he committed, not the main perpetrator in the crime and provides information as a witness in the judicial process.⁵ The position of justice collaborator cannot be easily pinned for criminal offenders who are willing to be witnesses, especially the main perpetrators, and not all witnesses can become

³ River Yohanes Manalu, Justice Collaborator in Corruption Funding, *Lex Crimen Journal* Vol. IV / No. 1 / Jan-Mar / 2015, p. 152

⁴ Desi Anwar, *Complete Dictionary 1 Milliard English-Indonesian, Indonesian-English*, Surabaya: Amelia, 2003, p. 196

⁵ SEMA RI Number 4 of 2011 on Treatment for Reporters of Criminal Acts (Whistleblowers) and Witnesses who Cooperate (justice collaborator) in Certain Crimes Cases

justice collaborators. There are several conditions that must be fulfilled for someone to be domiciled as a justice collaborator, namely:⁶

- a) The criminal acts disclosed are serious and / or organized crimes, such as corruption, gross human rights violations, narcotics, terrorism, TPPU, trafficking, forestry. So for the matter of minor crimes do not recognize this term;
- b) The information given is significant, relevant and reliable. The information given can really be used as a guide by law enforcers in disclosing a crime so as to facilitate the performance of law enforcement officers
- c) People with the status of justice collaborator are not the main actors in the case because their presence as a justice collaborator is to reveal who the main perpetrators are in the case. He only played a minor role in the case but knew a lot about the criminal case that occurred
- d) The perpetrator acknowledges his actions before the law and is willing to return the assets obtained by the crime in writing; and
- e) The Public Prosecutor in his claim states that the person concerned has provided information and evidence that is very significant so that the investigator and / or public prosecutor can effectively disclose the intended crime, disclose other actors who have a greater role and / or returning assets / proceeds of a crime.

III. Research Method

This type of research is a normative legal research (juridical normative) that is research conducted or aimed at written regulations or other legal materials through library research or through document studies.⁷ The approach in this study uses a statutory approach and a case approach.⁸ Furthermore, the legal results of the research will be analyzed judicially-qualitatively through the method of interpretation, explored, constructed and given an argument to conclude.

IV. Result and Discussion

Criminal law regulation against witnesses who collaborate (justice collaborator) in positive law in Indonesia

The existence of rules regarding witness collaborating (justice collaborator) in Indonesia has not included these provisions in the law, but only regulated in the Supreme Court Circular Letter Number 4 of 2011 and joint regulations of law enforcement officers and the Witness and Victim Protection Agency (LPSK). Nevertheless, the provisions governing justice collaborator have been formulated in international legal regulations in the United Nations Convention Against Transnational Organized Crimes, subsequently ratified and adopted by Indonesia into Law Number 5 of 2009 on Ratification of the United Nations Convention Against Transnational Organized Crime (UN Convention Against Organized Transnational Crime). In this provision governs the protection of justice collaborators contained in Article 24 of witness protection, namely:

- 1) Each State Party shall take appropriate actions within its means to provide effective protection and the possibility of retaliation or intimidation of witnesses in the criminal process who provide testimony about the criminal acts covered by this Convention and, if appropriate, for families them and other people close to them.
- 2) The actions described in paragraph (1) of this Article may include, inter alia, without prejudice to the rights of the accused, including the right to be properly processed:

⁶ Sigit Artantojati, Protection of Witness Collaborating Actors by the Witness and Victim Protection Agency (LPSK), Thesis, Postgraduate Program, Jakarta: Universitas Indonesia, 2010, p. 90

⁷ Bambang Waluyo, Legal Research in Practice, Jakarta: Sinar Grafika, 2008, pp. 13-14

⁸ Peter Mahmud Marzuki, Legal Research, Jakarta: Kencana, 2013, pp. 113-134

a) Establish procedures for the physical protection of the person, such as, to the extent necessary and possible, to accommodate them and allow, if necessary, not to disclose or limit the disclosure of information regarding the person's identity and whereabouts

b) Provide rules of proof to enable testimony given by witnesses in a way that guarantees the safety of the witness, for example allowing testimony to be given through the use of communication technology such as video channels or other adequate means.

3) States Parties shall consider making agreements or arrangements with other States for the collection of persons referred to in paragraph (1) of this Article.

4) The provisions of this Article shall also be applied to victims insofar as they are witnesses.

The provisions of Article 24 paragraph (2) letter a above have explained the form of protection for witnesses, especially for witnesses who have collaborated (justice collaborator), without reducing the rights of the accused to be processed accordingly. While Article 24 paragraph (2) letter b is given special treatment for witnesses in the evidentiary process at the trial for the sake of security the witnesses may not be present at the hearing to provide information before the panel of judges, public prosecutors and legal advisors and use live video broadcasts in giving testimony .

Law Number 13 of 2006 is subsequently amended to Law Number 31 of 2014 on Protection of Witnesses and Victims, specifically in Article 10 paragraph (1) it is explained that witnesses who collaborate (justice collaborator) cannot be prosecuted both criminal and criminal as well as civil law on the testimony and / or report that will be, is being, or has been given, unless the testimony or report is not given in good faith, namely giving a perjury, false statement and conspiracy.⁹ Furthermore, the provisions of Article 10A of Law Number 31 Year 2014 on Protection of Witnesses and Victims are explained as follows:

1) Acting witnesses can be given special handling in the examination process and appreciation for the testimony given.

2) Special handling as referred to in paragraph (1) in the form of:

a) Separation of places of detention or places of criminal conduct between the Acting Witness and the suspects, defendants, and / or convicts whose crime is revealed

b) Separation of filing between the file of the Acting Witness with the file of the suspect and defendant in the investigation process, and the prosecution of the criminal act he disclosed; and / or

c) Give testimony before the court without face to face with the defendant whose crime was revealed.

3) Award for the testimony referred to in paragraph (1) in the form of:

a) Relief of criminal conviction; or

b) Parole, additional remissions, and other prisoners' rights in accordance with the provisions of the legislation for Witnesses who are prisoners.

The next provision is the Supreme Court Circular Letter (SEMA) Number 4 of 2011 on Treatment for Reporters of Criminal Acts (whistle blowers) and Witness Actors who Cooperate (justice collaborator) in Certain Criminal Cases, as clearly stated in point 9 of the SEMA that there are 2 (two) guidelines for determining someone as a justice collaborator, namely:

1) A criminal offense is regulated in SEMA namely Corruption, Narcotics, Terrorism and Other Human Rights Crimes, a person acknowledges the crime he committed and is not the main offender referred to in SEMA, not the main actor giving testimony in the judicial process, be it at the investigation, prosecution and court level.

⁹ General Explanation Article 10 of Law Number 31 Year 2014 on Protection of Witnesses and Victims

2) The prosecutor in his claim states that an offender who commits a criminal offense as stipulated in SEMA has provided information and evidence that is very significant so that the investigator and / or public prosecutor can effectively disclose the intended crime, disclosing other perpetrators who has a greater role and / or returns assets / proceeds of a criminal offense

The form of legal protection for witness collaborating actors (justice collaborator) in Narcotics crimes is related to the principle of legal certainty

Law enforcement against narcotics crime has been carried out by law enforcement officials and has received many judges' decisions in court hearings, even up to the death penalty for perpetrators. Law enforcement officers' actions in dealing with narcotics abuse have been tried to the maximum extent possible to prevent and take action against narcotics abusers, however, narcotics distribution and abuse can still be found and even the perpetrators are free to live freely with the community. Difficulties in uncovering narcotics abusers are inseparable from the nature of the crime as an organized transnational crime, then the modus operandi of the perpetrators is very neat, systematic, and difficult to be revealed by law enforcement officials.

In reality the difficulty of law enforcement against narcotics as a transnational-organized crime requires the participation of witnesses, it can even be said to have an important (vital) role in uncovering these serious crimes. In some countries making laws and regulations that provide rewards and guarantees for the safety of witnesses, this is intended to encourage someone who is aware of a crime to be willing to give information and cooperate with law enforcement.¹⁰

The presence of witnesses who have collaborated to alleviate crimes is not yet known in the current Indonesian Criminal Code (KUHP) system. However, the Supreme Court has issued a Supreme Court Circular (SEMA) as a form to facilitate community participation in tackling certain serious crimes such as corruption, terrorism, narcotics, laundering, human trafficking and other organized criminal acts.¹¹ The witness who cooperates is explained as one of the perpetrators of certain criminal acts as referred to in this SEMA is to acknowledge the crime committed, not the main perpetrator in the crime and provide information as a witness in the judicial process. The forms of treatment that judges can give are:

- 1) Dropping a special conditional trial sentence, and / or
- 2) Imposing the lightest imprisonment of the defendants who was proven guilty in the case in question.

In addition to the provisions above, Article 10 of Law 13 of 2006 in conjunction with Law Number 31 of 2014 on Witness and Victim Protection explains the following:

- 1) Victim witnesses and reporters cannot be legally prosecuted either criminal or civil over reports, testimonies that will, are or have been given
- 2) A witness who is also a suspect in the same case cannot be acquitted of criminal charges if he turns out to be legally proven and convincingly guilty, but his testimony can be used as a consideration of judges in committing criminal offenses.

The provision of special treatment in the form of criminal relief must be carried out by judges with an obligation to pay attention to the community's sense of justice. Basically, someone who is a justice collaborator is indeed entitled and must be protected because of the availability of a suspect to expose other actors above or reveal the main perpetrators, such as narcotics crimes controlled by narcotics mafias in their circulation.

¹⁰ In Italy justice collaborator is known as pentito or pentiti which means people who repent and, in its development, change the term to collaborator della giustizia. In the United States known as the supergrass, crown witness or justice collaborator.

¹¹ Djoko Sarwoko, Reward for "Whistle Blowers" and "JusticeCollaborators" (Witness Actors who Work Together) in Certain Crimes Cases, National Coordination Meeting of the Supreme Court 2011, p. 3

Legal protection for witnesses who collaborate (justice collaborator) according to the pattern of punishment in the United States instructs federal judges to consider the following factors:¹²

- a) The level of importance and usefulness of the assistance provided by the defendant in cooperation, by including the prosecutor's evaluation of the assistance provided.
- b) The honesty, completeness and reliability of the information or testimony provided by the defendant.
- c) The nature and extent of the assistance provided.
- d) There are threats that arise, or the risk of threats that may occur to the defendant or his family because of his assistance given to the prosecutor.
- e) Timing of the assistance.

Based on the above factors, it has been explained the importance of one's worthiness to be protected and obtain legal certainty for having cooperated and protected the law to guarantee security and threats, hence the existence of the Witness and Victim Protection Agency (LPSK). Protection can also be given in physical form so that there are no other prisoners or revenge and threats that are harmful to justice collaborators. Legal protection as stipulated in SEMA Number 4 of 2011 is nothing but the lowest penalty for justice collaborators and is given special protection as follows:

- 1) Separation of places of detention, confinement or imprisonment from suspects, defendants and / or other prisoners from crimes revealed in the case of witnesses of the collaborating perpetrators being detained or undergoing criminal offenses
- 2) Filing the case as far as possible is done separately from the suspect and / or other defendants in the criminal case reported or disclosed
- 3) Postponement of the prosecution of him
- 4) Delays in the legal process (investigation and prosecution) that may arise because of the information, reports and / or testimonies they provide; and / or
- 5) Give testimony before the court without showing his face or without showing his identity.

Besides that, justice collaborators are also given awards as follows:

- 1) Relief in prosecution demands, including demanding probation, and / or.
- 2) Granting additional remission and other prisoner's rights in accordance with the applicable laws and regulations if the Acting Witness who cooperates is a prisoner.

The provision of special legal protection and awards for witnesses who collaborate (justice collaborator) is needed in helping to find and find the main perpetrators, which is expected from this is to reduce the level of narcotics abuse in Indonesia. Thus, there must be guarantees to ensure that forms of protection for the rights of justice collaborators can be fulfilled by law enforcement officials in every criminal justice process.

V. Conclusion

From the description that the author has described, which is the answer to the formulation of the problem under study can be concluded as follows:

Legal arrangements for witnesses who collaborate (justice collaborator) in positive law in Indonesia have been formulated in several provisions that can be used as references and guidelines, namely Law Number 5 of 2009 on Ratification of the United Nations Convention Against Transnational Organized Crime (UN Convention Against Acts) Organized Transnational Crime), Law Number 13 of 2006 is subsequently amended to Law Number 31 of 2014 on

¹² Lilik Mulyadi, Legal Protection of Whistleblower & Justice Collaborator, Bandung: PT. Assumptions, 2015, p. 154

Witness and Victim Protection, and Supreme Court Circular Letter (SEMA) Number 4 of 2011 on Treatment for Reporters of Criminal Acts (whistle blowers) and justice collaborator Witness in a Certain Criminal Case.

Legal protection for witnesses who collaborate (justice collaborator) in narcotics crimes can be adjusted to the existing provisions by providing special protection and appreciation for witnesses who collaborate (justice collaborator). Special forms of protection include the separation of places of detention from crimes revealed in the case of witnesses the collaborating perpetrators are detained (convicted); postponement of his prosecution; postponement of legal proceedings; and testifying at court without showing his face or identity. Furthermore, the forms of appreciation that can be given to justice collaborators include relief of sentence demands (probation); or granting additional remissions and other prisoner's rights in accordance with applicable laws and regulations. These safeguards must be based on a sense of community justice and guarantees of legal certainty by law enforcement officials.

VI. Recommendations

1. Efforts to protect the law of witnesses who collaborate (justice collaborator) are carried out comprehensively by providing knowledge to the wider community relating to the prevention of narcotic crimes classified as transnational-organized crime, especially in dismantling and assisting law enforcement.

2. For law enforcement officials (judges) who are authorized to impose a crime must really pay full attention to the policies relating to the application of the crime imposed on witnesses in collaboration (justice collaborator), namely in dropping the lowest crime even below the minimum standard due to reasons for a greater purpose and importance so that the witnesses of the perpetrators are not afraid to give their testimony in dismantling / eradicating narcotics crimes that endanger the community and the state.

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